



# New Zealand Employment Relations Authority Decisions

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## Brown v Evalstars Limited (Wellington) [2018] NZERA 2101; [2018] NZERA Wellington 101 (6 November 2018)

Last Updated: 12 November 2018

<b>IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON</b>		
		[2018] NZERA Wellington 101 3027674
	BETWEEN	LORRAINE ANN BROWN Applicant
	AND	EVALSTARS LIMITED Respondent
Member of Authority:	M B Loftus	
Representatives:	Lorraine Brown, on own behalf Catherine (Kate) Averill, for Respondent	
Investigation Meeting:	On the papers	
Determination:	6 November 2018	
<b>DETERMINATION OF THE AUTHORITY</b>		

[1] Lorraine Brown seeks the payment of an unpaid portion of her salary she says was due on resignation from Evalstars in May 2017. The amount is \$20,200.

[2] There is no dispute the money is owing. That was conceded by Ms Averill, a Director of and majority shareholder in Evalstars, during a telephone conference initially called to discuss how the claim would progress on 13 August 2018.

[3] The issue from Evalstars perspective is its ability to pay and it was seeking to defer payment and attain an outcome which saw it pay the amount owed by instalment.1 Both the concession in respect to the debt and the plea for instalment payments reflect the content of earlier documents already before the Authority.

[4] It was explained the default position when monies owe to an employee is payment in full. Instalment payments can only be ordered *...if the financial position*

1 [Section 138\(1A\)](#) of the [Employment Relations Act 2000](#)

*of the employer requires it.*2 It was for the employer to evidence the need for instalment payments.

[5] The parties then agreed I would determine the matter on the papers with further information being provided in accordance with the following timetable. The respondent would provide its argument, accompanied by

supporting evidence, as to why instalment payments were required by 14 September 2018. Ms Brown had a right of reply due by 12 October and the respondent then had till 19 October 2018 to provide final comment.

[6] Suffice to say Evalstars failed to provide anything by 14 September though it did ask for an extension on 17 September. In my absence the Chief of the Authority considered that request and declined it after consulting the file. He did so primarily on the grounds the request reflected a history of the respondent having failed to adhere to agreements regarding action in respect to this matter.

[7] Further correspondence has ensued with Ms Brown saying she has waited long enough and been subjected to inordinate financial pressure as a result of Evalstars failure. She is also saying Evalstars failure to comply with the timeline means there is nothing further to consider and a determination may now proceed in accordance with the parties agreement of 13 August using the information I already have.

[8] As events transpired Evalstars provided a seven line spreadsheet on 23 October. It purports to show monthly income and expenses and suggests Evalstars can address its debt to Ms Brown via monthly payments of \$2,000.

[9] Ms Brown's response is, amidst other things, *I have received dozens of payment plans that look exactly like this, none have ever been honoured.*<sup>3</sup>

[10] A reading of the file would suggest Ms Brown's statement is correct but far more important is the fact nothing accompanies the bold assertions contained in the spreadsheet. There is absolutely nothing which supports the veracity of the numbers contained there-in.

2 Above n 1

3 E-mail of 23 October 2018 at [8]

[11] In summary I conclude I have nothing which comes remotely close to meeting the Act's requirement an employer seeking instalment payment of an acknowledged debt to an employee establish it is required.

[12] Ms Brown is correct in saying enough is enough and in the absence of the agreed evidence/argument supporting instalments payments I bring this matter to an end as agreed during the telephone conference of 13 August.

[13] Ms Brown did not, in her statement of problem, seek costs so none will be ordered.

## Orders

[14] For the above reasons I order the respondent, Evalstars Limited, pay the applicant, Lorraine Brown, the sum of \$20,200.00 (twenty thousand, two hundred dollars) being unpaid salary.

[15] The above payment is to be made to Ms Brown no later than 4.00pm on Friday 16 November 2018.

[16] In closing I advise the respondent and its directors of two further points. The first is as this determination involves a failure to pay money due to an employee the directors may find themselves personally liable should Evalstars fail to pay.<sup>4</sup> The second is continuing failures may result in further consequences that could potentially include the imposition of fines, the sequestration of property and/or imprisonment.

M B Loftus

Member of the Employment Relations Authority

4 [Sections 142W](#) and [142Y](#) of the [Employment Relations Act 2000](#)