

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2023] NZERA 284  
3206899

BETWEEN	DAVID BRYANT Applicant
AND	SKF CONTRACTING LIMITED Respondent

Member of Authority: Rowan Anderson

Representatives: Lars Hansen, counsel for the Applicant  
Shane Flavell, in person for the Respondent

Investigation Meeting: 30 May 2023 at New Plymouth

Submissions received: At the investigation meeting

Determination: 1 June 2023

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**DETERMINATION OF THE AUTHORITY**

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**Background**

[1] On 27 May 2022 the Authority issued a consent determination (Consent Determination).<sup>1</sup> That determination included a settlement reached between the parties, the terms of which have the status of, and are enforceable as, an order of the Authority.

[2] Mr Bryant has lodged a statement of problem claiming that SKF Contracting Limited (SKF) has not complied with the Consent Determination, asking that compliance orders be made under s 137(1) of the Employment Relations Act 2000 (the Act), seeking interest of the amounts due, and seeking the imposition of penalties against SKF.

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<sup>1</sup> *QLZ v PAM* [2022] NZERA 217.

## **Non-publication**

[3] The names of the parties in the Consent Determination were anonymised and an order prohibiting publication the identities of the parties and witnesses was made. Neither party has sought a non-publication order in relation to these compliance proceedings.

## **The Authority's investigation**

[4] A case management conference was held on 23 February 2023. SKF, prior to the case management conference, lodged a reply to the statement of problem in the form of an email dated 26 January 2023. That reply included assertions that Mr Bryant had breached confidentiality and non-disparagement obligations arising out of the settlement agreement incorporated into the Consent Determination. SKF were advised that any such claims would need to be raised via lodgement of a statement of problem. This was confirmed in written directions issued on 23 February 2023. SKF confirmed at the investigation meeting that it has decided not to pursue those claims.

[5] The directions issued included timetable directions for the lodgement and service of any written statements of evidence. The only statement of evidence lodged was that of Mr Bryant. SKF instead lodged a document containing what was said to be the position of SKF in the form of a statement in reply.

[6] Mr Bryant gave evidence under oath at the investigation meeting. Shane Flavell and Katy Krzywiec, both directors of SKF, attended the investigation meeting. SKF were offered the opportunity to provide evidence at the investigation meeting, without objection from Mr Bryant. Mr Flavell, under affirmation, provided some limited evidence as to the financial position of SKF. SKF otherwise declined to provide any other witness evidence. An opportunity was provided for the parties to make oral submissions at the investigation meeting, and both did so.

[7] As permitted by s 174E of the Employment Relations Act 2000 this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **Failure to comply with the Substantive Determination**

[8] Mr Bryant claims that SKF made payment of only \$5,000 of a total of \$15,000 due in accordance with the Consent Determination.

[9] SKF does not contest Mr Bryant's claim that \$10,000 of the settlement sum has not been paid to him by SKF. SKF paid an initial sum of \$5,000 due under the settlement but have failed to make payment of five scheduled payments of \$2,000 each, totalling \$10,000.00.

[10] Mr Bryant asserts that despite demands being made for payment, including on 29 July 2022 and 24 August 2022, that SKF has not paid the sums owing in accordance with the orders made. The Authority was provided the relevant correspondence drawing attention to SKF's failure to make the payments due and demanding payment.

[11] I am satisfied on the basis of the uncontested evidence provided by Mr Bryant that SKF is in breach of its obligation to make payment of the following sums to Mr Bryant as ordered in the Consent Determination:

- (a) \$2,000.00 on 26 July 2022;
- (b) \$2,000.00 on 26 August 2022;
- (c) \$2,000.00 on 26 September 2022;
- (d) \$2,000.00 on 26 October 2022; and
- (e) \$2,000.00 on 26 November 2022.

[12] I am also satisfied that there is no indication that SKF intends to voluntarily comply with the Consent Determination and that it is appropriate and necessary that a compliance order be made.

### **Compliance order against SKF Contracting Limited**

[13] Mr Bryant's application for compliance against SKF is successful.

[14] Appropriate steps were taken by Mr Bryant to demand payment via his counsel, and SKF's non-compliance has been ongoing and repeated. I am satisfied that Mr Bryant is entitled to the payment of interest on the sum owed. I award interest on the total of the sum owed in accordance with clause 11(1) of Schedule 2 of the Act and the Interest of Money Claims Act 2016.

[15] Interest on the outstanding sum due relating to the Consent Determination is to be calculated from 26 November 2023, the date on which the last payment was due as recorded above in this determination, until the date on which payment has been made in full.

[16] Interest is to be calculated using the Ministry of Justice’s “civil interest debt calculator”.<sup>2</sup>

[17] I have considered, for the purposes of s 138(4A) of the Act, whether an order should be made for payment by instalments. It is apparent that some preference has been given by SKF to other expenses over the sum owed to Mr Bryant. Having regard to the relatively limited evidence provided by Mr Flavell, I am not satisfied that the current financial position of SKF requires that such an order be made.

[18] SKF Contracting Limited is ordered to comply with the Consent Determination, by 29 June 2023, by making payment of \$10,000.00 (plus interest) to Mr Bryant.

### **Claim for penalty**

[19] Mr Bryant has claimed that a penalty should be imposed upon SKF for “breach of the Authority order”. Having regard to the claim as made in the statement of problem, and the submissions made on behalf of Mr Bryant, no provision of the Act for which a penalty in the Authority is provided for has been explicitly identified.

[20] I am not satisfied that a penalty is available and as such the claim for penalty is dismissed. However, it is noted that other remedies, detailed below, are potentially available in the event of further non-compliance.

### **Costs**

[21] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[22] If they are not able to do so and an Authority determination on costs is needed Mr Bryant may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service

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<sup>2</sup> The calculator is available on the Ministry of Justice’s website.

of that memorandum SKF Contracting Limited would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

### **Warning to SKF Construction Limited**

[23] Failure by SKF Limited to comply with the Authority's compliance orders may result in Mr Bryant applying to the Employment Court for compliance, as permitted by s 138(6) of the Act, and for the Court to exercise its powers under s 140(6), which include a fine not exceeding \$40,000 or an order that the property of the person in default be sequestered.

### **Summary of orders**

[24] SKF Contracting Limited is ordered to comply with the Consent Determination<sup>3</sup>, by 29 June 2023, by making payment of \$10,000.00 (plus interest) to Mr Bryant.

Rowan Anderson  
Member of the Employment Relations Authority

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<sup>3</sup> *QLZ v PAM* [2022] NZERA 217.