

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 498  
5430994

BETWEEN                      PAUL BURROWS  
                                         Applicant  
  
A N D                              THE SIGN CENTRE LIMITED  
                                         Respondent

Member of Authority:        Rachel Larmer  
  
Representatives:              Kerry Single, Advocate for Applicant  
                                         Zane Clarke, Sole Director and Shareholder of  
                                         Respondent  
  
Investigation Meeting:        01 November 2013 at Tauranga  
  
Date of Determination:        Record of oral determination delivered to parties at IM  
                                         on 01 November 2013

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**DETERMINATION OF THE AUTHORITY**

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- A.     The Sign Centre Limited (The Sign Centre) is ordered to comply with the Record of Settlement of 18 June 2013 by paying Mr Paul Burrows \$3,500 on or before 30 November 2013 and \$3,500 on or before 31 December 2013.**

**Employment relationship problem**

[1]     The parties entered into a Record of Settlement on 18 June 2013 which was signed by a mediator in accordance with the requirements of s.149 of the Employment Relations Act 2000 the Act). Under the terms of that settlement The Sign Centre was to pay Mr Burrows;

- a.     an agreed amount within seven days of the parties signing the Record of Settlement; and

b. additional monthly payments of \$1,750 which were due on 21st of July, August, September and October.

[2] The payment in paragraph [1a] has been made but none of the payments in paragraph [1b] have been made. The amount currently outstanding under the Record of Settlement is \$7,000. Mr Burrows seeks a compliance order against The Sign Centre for this amount.

[3] Mr Clarke told the Authority that Mr Burrows had not been paid the amounts due under paragraph [1b] because The Sign Centre had been pressured by two of its big creditors to pay them a combined total of \$4,400 per month or face liquidation. As a result of that pressure The Sign Centre diverted the money it had allocated to pay Mr Burrows to these two big creditors.

[4] Mr Clarke told the Authority that neither of the two big creditors were aware of the Record of Settlement The Sign Centre had entered into with Mr Burrows. From what I could ascertain these two big creditors were receiving money as a result of a voluntary agreement they had entered into with The Sign Centre rather than payments being made in accordance with a Court order or other legally binding contractual arrangement.

[5] I consider that Mr Burrows' entitlement to be paid in accordance with the terms of the Record of Settlement entered into by the parties in June should take priority over subsequent voluntary arrangements The Sign Centre has elected to enter into. The Record of Settlement is a final, binding and enforceable legal document. For mediated outcomes to be successful parties need to have confidence that the terms of a s.149 Record of Settlement can and will be enforced by the Authority.

[6] During the investigation meeting I spoke by telephone to The Sign Centre's accountant who gave evidence under affirmation about the company's financial situation. He confirmed The Sign Centre's most recent financial accounts were outstanding, that it had other creditors and limited realisable assets. He considered that an arrangement under which The Sign Centre would be directed to pay Mr Burrows \$3,500 in November and \$3,500 by 31 December 2013 would enable the company to continue trading in the immediate future.

## **Outcome**

[7] I consider it appropriate to order the Sign Centre to comply with the Record of Settlement by paying Mr Burrows the outstanding \$7,000 he is owed. I am satisfied that The Sign Centre's financial position requires me to order payment to Mr Burrows by instalments in accordance with s.138(4A) of the Act.

[8] Accordingly, The Sign Centre is ordered under s.137 of the Act to pay Mr Burrows \$3,500 on or before 30 November 2013 and \$3,500 on or before 31 December 2013. Failure by The Sign Centre to comply with this compliance order may result in Mr Burrows applying to the Employment Court to exercise its powers under s.140(6) of the Act.

## **Costs**

[9] Although Mr Burrows as the successful party is entitled to a contribution towards his costs he advised the Authority that he was not seeking costs given The Sign Centre's financial position.

## **Penalty**

[10] Mr Burrows withdrew his claim for a penalty at the investigation meeting to enable The Sign Centre to focus on paying him the \$7,000 arrears he is owed.

**Rachel Larmer**  
**Member of the Employment Relations Authority**