

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Travers Neil Carr (Applicant)
AND Nathan Jean Seator (Respondent)
REPRESENTATIVES Travers Neil Carr In person
No appearance for Respondent
MEMBER OF AUTHORITY R A Monaghan
INVESTIGATION MEETING 14 December 2005
DATE OF DETERMINATION 16 December 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

- [1] Nathan Seator was the employer party to an apprenticeship agreement with Travers Carr. Mr Carr sought unpaid wages and holiday pay from Mr Seator.
- [2] Mr Carr's employment relationship problem was referred to mediation and was the subject of a mediated settlement dated 31 October 2005. The terms of the settlement were not complied with, and accordingly a compliance order has been sought.

Nathan Seator's failure to appear

- [3] Mr Seator did not file a statement in reply in respect of the original claim for monies owing, nor any statement in respect of his subsequent failure to comply with the terms of the mediated settlement. This is despite several attempts to communicate with him by telephone on Mr Carr's part and the Authority's, as well as correspondence from the Authority's senior support officer.
- [4] After receiving advice from Mr Carr that the mediated settlement had not been complied with, the Authority confirmed to both parties that an investigation meeting would proceed, but that it would address the failure to comply with the settlement. The resulting notice of investigation meeting and a covering letter were served on Mr Seator. The senior support officer followed up with a phone call to Mr Seator on 9 December 2005, confirming that the meeting would go ahead and that it would address Mr Seator's failure to pay Mr Carr. She also warned Mr Seator of the consequences of any failure to attend.
- [5] Mr Seator did fail to attend the investigation meeting. Since I am satisfied he has notice of the proceedings and of the meeting date, I have determined this matter in his absence pursuant to Schedule 2 clause 12 of the Employment Relations Act 2000.

Determination

[6] The mediated settlement was reached under s 149 of the Act. The terms of the settlement are final and binding on, and enforceable by, the parties. Except for enforcement purposes the terms cannot be brought before the Authority or the Court, nor can the terms be cancelled under the Contractual Remedies Act 1979.

[7] Since this is now an enforcement problem, it is properly before the Authority. The settlement required Mr Seator to pay to Mr Carr the sum of \$4000 as a 'compensatory payment', payable in 16 weekly payments of \$250 each and commencing on 14 November 2005.

[8] No payments have been made and no reason for the non-payment has been advanced.

[9] As of today, five payments have been missed. A sixth is due, and Mr Carr's inactivity in respect of Mr Carr's problem suggests it is very unlikely it will be paid on time. Accordingly I order as follows:

- (a) Mr Seator is to pay to Mr Carr the sum of \$1,500 immediately; and
- (b) Mr Seator is to commence on 26 December 2005 making the remainder of the weekly payments owed to Mr Carr, and continue thereafter to make weekly payments of \$250 in terms of the mediated settlement.

[10] I record further that s 149(4) of the Employment Relations Act provides that a person who breaches an agreed term of a settlement made under s 149 is liable to a penalty imposed by the Authority. Mr Carr has not had notice of the possible imposition of a penalty so I am unable to take that matter further at present. However he is put on notice that any further breach of the settlement may attract a penalty of up to \$5,000 for each breach.

Costs

[11] Mr Seator is further ordered to pay costs in respect of the filing fee of \$70.

R A Monaghan
Member, Employment Relations Authority