

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2019] NZERA 639  
3074692

BETWEEN            PAUL CARRUTHERS  
                                 Applicant  
  
AND                    BROMMEL ROOFING LIMITED  
                                 Respondent

Member of Authority:     Michael Loftus  
  
Representatives:           Peter McKenzie-Bridle, counsel for the Applicant  
                                 Nil for the Respondent  
  
Investigation Meeting:     On the papers with input up to and including  
                                 7 November 2019  
  
Date of Determination:     7 November 2019

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicant, Paul Carruthers, seeks an order the respondent comply with the terms of a mediated settlement the parties concluded on 28 August 2019. The settlement was signed by a mediator in accordance with s 149 of the Employment Relations Act 2000.

[2]     Brommel Roofing Limited (Brommel) has failed to participate in the Authority's process. There is no statement in reply, nor any other response.

**Investigatory process and non-participation of the respondent**

[3]     All companies are required to have an address for service and all relevant documents have been sent to that address.<sup>1</sup> I am satisfied they were delivered.

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<sup>1</sup> Section 192(1) of the Companies Act 1993

Included was advice that unless a statement in reply was lodged by 5.00pm Wednesday 30 October 2019 the matter would be determined on the papers before the Authority. There was no reply.

[4] In addition there is Regulation 8(3) of the Employment Relations Authority Regulations 2000 which provides that in the absence of a Statement in Reply the respondent can only defend the claim with leave of the Authority. Leave has not been sought.

[5] Given Brommel has been advised of the proposed process along with the consequences of ignoring the claim I conclude it appropriate to continue. The applicant is entitled to have the claim determined.

### **Discussion**

[6] As already said the parties attended mediation on 28 August 2019. It ended with a Record of Settlement signed by the mediator pursuant to s 149 of the Act which, amidst other things, required the respondent pay Mr Carruthers a total of \$25,000. Payment was to be made in four instalments with the first of \$1,000 due by 29 August 2019. That was to be followed with \$4,000 by 6 September, \$10,000 by 30 September and a further \$10,000 by 31 October 2019.

[7] Brommel was also required to pay a contribution of \$2,500 plus GST towards Mr Carruthers' representation costs. That was to be paid on receipt of an appropriate tax invoice which made it payable by 11 September 2019.

[8] The first payment was made but on 6 September Mr Carruthers only received \$1,000 and not the \$4,000 due. He says that when he queried that he was told Brommel couldn't pay but would try to correct the matter that week. Mr Carruthers says he was told if he didn't like it he could *get legal*.

[9] As it transpires there has, since the lodging of this application, been further payments but nothing approximating the total due. The contribution toward legal costs remains unpaid.

[10] The fact there have been continuing payments causes me some concerns but ultimately Mr Carruthers is entitled to ask that Brommel be required to honour its commitments. I also have to add Brommel's failure to participate in the process has

not assisted as that has removed any chance the matter might be resolved in another way.

[11] The claim, as lodged, sought a compliance order. The nature of the claim is not, in my view, altered by the fact the amount involved has changed since filing, especially in the absence of input from the respondent. Monies were due and have not been paid.

[12] Given the evidence I accept Brommel is in breach of various obligations pursuant to the settlement. It further follows the order sought, namely that Brommel be required to comply with the settlements terms, will be made.

### **Conclusion**

[13] For the above reasons I order the respondent, Brommel Roofing Limited, comply with the terms of the s 149 settlement agreed on 28 August 2019 and pay the outstanding amounts; namely \$19,000.00 (nineteen thousand dollars) to Mr Carruthers and a further \$2,875.00 (two thousand, eight hundred and seventy five dollars) including GST to Bell & Co. Payment is to be made no later than 4.00pm on Thursday 21 November 2019.

[14] In closing I caution the respondent that failure to comply with the above orders may result in further consequences. Should such a failure be pursued in the Employment Court they potentially include the imposition of fines or sequestration of property.<sup>2</sup> Conversely a certificate of determination may be obtained and the matter pursued under the District Courts Act 1947 which offer a more diverse and effective range of remedies than those available to the Employment Court.<sup>3</sup>

[15] Costs are reserved.

Michael Loftus  
Member of the Employment Relations Authority

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<sup>2</sup> Sections 139 and 140 of the Employment Relations Act 2000

<sup>3</sup> *Denyer v Peter Reynolds Mechanical Ltd t/a The Italian Job Service Centre* [2015] NZEmpC41 at [42] and *Broeks v Ross EmpC Auckland AC36A/09*, 11 November 2009 at [5]