

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2021] NZERA 295
3127694

BETWEEN	DEBORAH ANNE COLCLOUGH Applicant
AND	LIVE IT UP LIMITED Respondent

Member of Authority:	Marija Urlich
Representatives:	Applicant, in person No appearance for the Respondent
Investigation Meeting:	By telephone
Information received:	At the investigation meeting
Determination:	13 July 2021

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In a determination dated 13 October 2020 (the primary determination) the Authority found Live It Up Limited (LIUL) owed Ms Colclough arrears of wages of \$1995.00 and holiday pay of \$1233.80, ordered it to pay those arrears along with a calculation of interest and reimburse her the filing fee of \$71.56 within 14 days of date of determination.¹

[2] By application filed on 3 December 2020 Ms Colclough seeks to enforce those orders against LIUL by way of compliance order.

¹ *Colclough v Live It Up Limited* [2020] NZERA 416.

[3] LIUL has not filed a statement in reply. I am satisfied it was served with the application on 7 January 2021.

The Authority's investigation

[4] LIUL has not filed a statement in reply and has not sought leave to do so. I am satisfied it has been served with Ms Colclough's application dated 3 December 2020. Further, I am satisfied LIUL was served with the minute dated 15 June 2021 setting out proposed directions for investigation of this application, the notice of investigation meeting dated 16 June and Ms Colclough's statement of problem, at its address for service at 10.49am on 21 June 2021. I am also satisfied LIUL was served with a copy of the primary determination by email on 13 October 2021. At the investigation meeting there was no appearance on behalf of LIUL. Robert Semple, LIUL's sole director and shareholder, was telephoned immediately prior to the commencement of the investigation meeting and a message left that it would proceed in LIUL's absence. I am satisfied LIUL has had a fair opportunity to participate in the investigation of Ms Colclough's compliance application.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) 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.

Compliance order against Live It Up Limited

[6] Ms Colclough confirmed she had not received any payment from Live It Up Limited for any of the awards made in her favour. Those awards were:

- (i) wage arrears of \$1995.00;
- (ii) holiday pay of \$1233.80;
- (iii) filing fee of \$71.56; and
- (iv) calculation of interest on wage and holiday pay arrears total sum of \$3228.80 from 18 November 2018 until the date payment is made in full.²

² *Colclough v Live It Up Limited*, above n 1, at [22].

[7] I accept that there has been a failure to comply with the primary determination and exercise my discretion under s 137(1)(b) of the Act to order compliance with the awards contained therein.

[8] Within fourteen days of the date of this determination Live It Up Limited is ordered to comply with the primary determination and pay Deborah Colclough the awards contained therein including calculation of interest and reimbursement of the filing fee.

If Live It Up Limited fails to comply with the compliance orders at [8] can Ms Colclough seek to recover the arrears from any other person?

[9] Under s 142Y(2)(a) and (b) of the Act, an employee seeking to recover money from a person who is not their employer can only do so with prior leave of the Authority (or Court) and to the extent the employer is unable to pay the money owing. If such an application is made the Authority must be satisfied there has been default in payment, that the default involves a breach of employment standards and that the person against whom recovery is sought was involved in the default.³ Employment standards include the requirement to pay holiday pay under the Holidays Act 2003 and pay the minimum wage under the Minimum Wage Act 1983. A person involved in a default could include a director of a company which is the employing entity.⁴

Filing fee

[10] The filing fee of \$71.56 Ms Colclough incurred in lodging the compliance application can reasonably be recovered from LIUL. Live It Up Limited is to pay the sum of \$71.56 to Ms Colclough within 14 days of the date of this determination.

Outcome

[11] Within 14 days of the date of this determination Live It Up Limited must:

- comply with the primary determination for which compliance orders have been made and pay Deborah Colclough \$3300.36 and calculate and pay interest on the arrears of wages and holiday pay; and

³ Employment Relations Act 2000, s 5.

⁴ Employment Relations Act 2000, s 142W(3).

- reimburse Deborah Colclough the filing fee of \$71.56.

Marija Urlich
Member of the Employment Relations Authority