

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2023] NZERA 383  
3223479

BETWEEN            MURRAY COUSENS  
                                 Applicant  
  
AND                    STUART DALE BIGGS  
                                 Respondent

Member of Authority:     David G Beck  
  
Representatives:           Paul Mathews, advocate for the Applicant  
                                 No appearance for the Respondent  
  
Investigation Meeting:    13 July 2023 by telephone conference  
  
Submissions Received:    13 July from the Applicant  
                                 None from the Respondent  
  
Date of Determination:    19 July 2023

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     In a determination issued on 19 July 2021 the Authority pursuant to s 137 Employment Relations Act 2000 (the Act) issued a compliance order that Star Nelson Holdings Limited within 14 days, pay Murray Cousens:

- (i) Compensation of \$25,000.00

(ii) lost wages of \$6,131.12

(iii) A penalty award of \$4,000 (with \$2,000 to be paid to Murray Cousens and \$2,000 to the Crown).

(iv) Legal costs of \$3,000.<sup>1</sup>

[2] The above compliance order arose out of an initial determination of the Authority issued on 15 February 2021 after Mr Cousens established he had been unjustifiably dismissed.<sup>2</sup>

[3] In a further determination of 3 March 2022, the Authority pursuant to s 137(2) of the Act directed that Stuart Dale Biggs the sole director of Nelson Star Holdings Limited, take steps to ensure that Star Nelson Holdings Limited paid the above awarded amounts to Mr Cousens and costs of \$500 and an application fee of \$71.56.<sup>3</sup>

[4] To date, the above compensatory awards and costs and the penalty awarded from all three proceedings have not been made by Star Nelson Holdings or effected by Stuart Dale Biggs.

[5] In subsequent proceedings before the Employment Court *Cousens v Star Nelson Holdings Ltd*, Star Nelson Holdings was also fined \$10,000 pursuant to s 140(6) of the Act and had costs awarded against it in the sum of \$3,000.

[6] Mr Cousens now seeks an additional compliance order pursuant to s 137(1)(b) of the Act specifically seeking Stuart Dale Biggs comply with the Authority's determination of 3 March 2022.

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<sup>1</sup> *Cousens v Star Nelson Holdings Ltd* [2021] NZERA 52.

<sup>2</sup> *Cousens v Star Nelson Holdings Ltd* [2021] NZERA 305.

<sup>3</sup> *Cousens v Star Nelson Holdings and Stuart Dale Biggs* [2022] 67.

## **The Authority's investigation**

[7] Star Nelson Holdings Limited's director Stuart Dale Biggs did not respond to Murray Cousens' statement of problem or appear at the investigation meeting despite being called by the Authority prior to the investigation meeting and 'hanging up'. Mr Biggs did not participate in a directions teleconference that directed a timeline for exchange of evidence and submissions that Mr Biggs then failed to comply with but prior to the case management conference, he rang the Authority and then immediately hung up. This approach of Mr Biggs is consistent with past dealings the Authority and the Employment Court<sup>4</sup> has had with him on this and other matters.

[8] I am satisfied that the proceedings were served on the company at the address for service in the Companies Register and that Mr Biggs was aware of the investigation meeting notice that was delivered by courier post on 3 July 2023 and signed for by Mr Biggs.

[9] Pursuant to s 174E of the Employment Relations Act 2000 ("the Act"), I make findings of fact and law and outline conclusions to resolve the disputed issue and make orders but I do not record all evidence.

[10] Mr Cousens' advocate detailed unsuccessful attempts by emails of 24 March and 3 June 2022 to Mr Biggs to address the unresolved payments. The Authority notes the email address is one that Mr Biggs has previously used to communicate with the Authority. The emails went unacknowledged. In applying s 138(2) of the Act, I am satisfied that Mr Biggs has had an opportunity to appear or be represented before the Authority and he has actively chosen to not engage.

[11] I also heard from Mr Cousens' advocate that he lives modestly and about the distress he is suffering in his claims not being resolved over a significant period of time including ongoing legal costs.

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<sup>4</sup> *Cousens v Star Nelson Holdings Ltd* [2022] NZEmpC 30

## **Assessment**

[12] In the absence of any evidence to the contrary, I am persuaded that Mr Biggs as the sole director of Star Nelson Holdings Ltd directed the affairs of the company and at the time of employing Mr Cousens, he engaged Mr Cousens, oversaw his work, and directly allocated his work. For all intents and purposes when dealing with the company Mr Cousens always dealt with Mr Biggs and no one else. As I understand the uncontested evidence, Mr Biggs solely controlled the company.

[13] In considering the legal position I have regard to s 134(4) of the Act that provides discretion when looking at compliance to consider an order against “another person” even if that person is not in an employment relationship with Mr Cousens. The Employment Court in *Allen Chambers Ltd v Pelabon* traversed authorities in considering s 134(4) and found the discretion available to the Authority to be “wide”.<sup>5</sup>

[14] *Pelabon* upheld earlier orders of the Authority that had crafted a solution to ensure the company that the original determination ordering compensation be complied with by ordering both the company and the director of the company (Mr Chambers) to make the outstanding payments due as he was the agent of the company involved in the litigation (Zumo Retail Nelson Ltd).<sup>6</sup>

## **Finding**

[15] I find that Star Nelson Holdings Limited have not paid any of the compensatory awards or costs awarded by the Authority and despite being previously ordered to do so Mr Biggs has taken no steps to effect the payments owed. The compliance order sought by Murray Cousens is appropriate and I grant it on the following terms.

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<sup>5</sup> *Allen Chambers v Pelabon* [2019] NZEmpC 45 at [44].

<sup>6</sup> *Florian Pelabon v Zumo Retail Nelson Limited and Allen Chambers Limited and George Allen Chambers* [2018] NZERA 44. See also *Northern Clerical Workers Union v Lawrence Publishing Co of New Zealand Ltd* [1990] 1 NZILR 717 (LC).

## **Order**

[16] By order of the Authority under s 137 Employment Relations Act 2000, Star Nelson Holdings Limited must comply with the orders contained in the determinations dated 19 July 2021 and 3 March 2022. To effect this order, Stuart Dale Biggs as the agent of Star Nelson Holdings Limited, is ordered to make the payments referred to, no later than 14 days from the date of this determination i.e.:

- (i) \$25,000.00 compensation for hurt and humiliation.
- (ii) \$6,131.12 reimbursement of lost wages.
- (ii) A penalty award of \$4,000 (\$2,000 to Murray Cousens and \$2000 to a Crown bank account).
- (ii) Costs of \$3,500 from the previous proceedings and \$400 for these proceedings.
- (ii) Two filing fees amounting to a total of \$143.10.

## **Costs**

[17] Costs are at the discretion of the Authority and here Murray Cousens was successful in his action for a compliance order and has sought a costs contribution to prepare his application and assist with a submission. I have fixed that at \$400 above. I also consider Mr Cousens should recover his filing fee.

David G Beck  
Member of the Employment Relations Authority