

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 277
5574156

BETWEEN

BARRY DAVIS

Applicant

AND

PAYLESS PRINT LIMITED

Respondent

Member of Authority: Robin Arthur
Representatives: Applicant in person
James Deo for the Respondent
Investigation Meeting: On the papers
Determination: 11 September 2015

DETERMINATION OF THE AUTHORITY

- A. Under s137 of the Employment Relations Act 2000 (the Act) Payless Print Limited is ordered to comply with the term of a settlement agreement made and certified under s149 of the Act requiring payment of outstanding wages and holiday pay to Barry Davis.**
- B. The required payment must be made in full by no later than 4pm on Friday, 18 September 2015.**
- C. Leave is reserved (on the terms given in this determination) for Mr Davis to amend his statement of problem to also seek the imposition of a penalty under s149(4) of the Act for breach of an agreed term of settlement.**

Employment Relationship Problem

[1] Agreed terms of settlement between Barry Davis and Payless Print Limited were set out in a Record of Settlement dated 8 July 2015 and certified under s149 of

the Employment Relations Act 2000 (the Act) by a mediator. Certification in this way made the terms final, binding and enforceable.

[2] By statement of problem lodged on 7 August 2015 Mr Davis alleged Payless Print Limited (PPL) had not paid him wages and holiday pay due to be paid in full by 5 August under a term of the settlement agreement. PPL had also failed to make an earlier part-payment of that amount due on 22 July.

[3] PPL failed to lodge a statement in reply to Mr Davis' application to the Authority. Courier records show a copy of his statement of problem was delivered to PPL's registered office on 11 August 2015 and signed for by James Deo. Mr Deo had also signed the settlement agreement on PPL's behalf following mediation on 8 July 2015.

[4] By Minute on 3 September 2015 the Authority advised the parties that a determination of Mr Davis' application would be made on 10 September without holding an investigation meeting if there was no further communication from one or both parties in the meantime requiring some other action. Courier records confirm a copy of the Minute was delivered to PPL's registered office on 4 September. A copy of the Minute was also sent to two email addresses identified for Mr Deo and to the residential address for PPL's director Nathan Sharma listed in Companies Office records. No response or further information has been received from PPL.

[5] An Authority officer today contacted Mr Davis by telephone who confirmed he had not received payments due to him from PPL under the terms of settlement.

Compliance order

[6] Exercising the discretion provided to the Authority under s 160 and s 174D of the Act I considered no investigation meeting was required and it was appropriate to issue an order for PPL to comply with the settlement agreement term for payments due to Mr Davis. The order has been set out in paragraphs A and B at the head of this determination. If PPL fails to comply with the order Mr Davis may apply to the Employment Court for orders for sequestration of PPL property or the imposition of a fine.

Leave to amend statement of problem

[7] Exercising the discretion provided to the Authority under s 160(3) and s 138(5) of the Act I have also reserved leave for Mr Davis to amend his statement of problem in order to apply for the imposition of a penalty on PPL under s149(4) of the Act. Under s 149(4) PPL may be liable to a penalty imposed by the Authority for breach of a term of a certified settlement agreement. Section 135 of the Act provides for imposition of a penalty on a company of up to \$20,000.

[8] If PPL has not paid the amounts due under the compliance order by Friday, 18 September 2015 Mr Davis has leave to lodge an amended statement of problem seeking a penalty against PPL for breach of an agreed term of settlement. If Mr Davis wishes to lodge an amended statement of problem he must do so by no later than Friday, 25 September 2015. Meanwhile the matter is adjourned until 18 September to enable PPL to comply with the compliance order: s138(5) of the Act.

Robin Arthur
Member of the Employment Relations Authority