

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 496/10
5326061

BETWEEN MICHELLE DAWSON
 Applicant

AND TOP FREIGHT LIMITED
 Respondent

Member of Authority: Alastair Dumbleton

Representatives: Mark Nutsford, advocate for Applicant
 Deryck Webb, advocate for Respondent

Investigation Meeting: 29 November 2010

Determination: 29 November 2010

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] Ms Michelle Dawson has applied for an order under s 137 of the Employment Relations Act 2000 requiring her former employer, Top Freight Limited, to comply with a settlement agreement made under s 149 of the Act. Section 151 provides that any agreed terms of settlement under s 149 may be enforced by a s 137 compliance order.

[2] The terms of settlement were agreed between Ms Dawson and Top Freight in the following circumstances. Upon termination of her employment in July 2009, Ms Dawson claimed she had been unjustifiably dismissed by Top Freight. She raised a personal grievance in this regard and tried to have it resolved in mediation. When that was unsuccessful Ms Dawson applied to the Authority for an investigation and determination of the employment relationship problem.

[3] On 16 September 2010, following an investigation meeting, the Authority issued a determination under AA 415/10 finding that Ms Dawson had been

unjustifiably dismissed. As remedies the Authority ordered Top Freight to pay her \$8,775 in reimbursement of lost wages and \$7,000 as compensation for hurt feelings and distress. Payment was required within 28 days.

[4] Following the issue of that determination Top Freight indicated that it intended to file a challenge *de novo* to the Employment Court. The parties then negotiated a settlement that allowed Ms Dawson to be paid without delay a sum of money which, although less than the total awarded by the Authority, removed the possibility of a challenge changing the Authority's determination.

[5] A record of the terms of settlement was signed by a mediator on 18 October 2010, pursuant to s 149 of the Act.

[6] A preamble to the terms of settlement records the fact of the Authority's determination dated 16 September given in favour of Ms Dawson, and Top Freight's intention to challenge that determination. The signed record also stated, *the parties have agreed to resolve the intended challenge on the terms of this settlement agreement*. The parties recorded that they had requested the mediator to sign the terms of settlement under s 149 of the Act.

[7] The particular terms of the agreement with which compliance is sought provided that Top Freight was to pay Michelle Dawson \$10,000, without deduction, and do so by direct credit to her bank account within 14 days of signature by a mediator of the terms of settlement.

[8] A further term of the settlement provided that the parties were to use all reasonable endeavours to do all things necessary to give effect to and implement the agreement promptly.

[9] There is no dispute that Top Freight did not comply with the terms of settlement by paying Ms Dawson \$10,000 within 28 days of the settlement. Neither has the payment, which was due no later than 2 November 2010, been made subsequently. Mr Deryck Webb the company's sole director has explained the failure as due to lack of money.

[10] After the agreed date for payment had passed Top Freight, through his solicitor at the time, offered to pay the \$10,000 in three instalments on 1 December 2010, 1 January and 1 February 2011. This was rejected by Ms Dawson because she

had already negotiated to receive a sum reduced from the amount awarded by the Authority in its determination and which she could have enforced by compliance against Top Freight.

[11] I find there is no sufficient basis on which the Authority should exercise its discretion not to order compliance in this case. The parties have been quite clear about the situation they have been in since the Authority issued its determination in September 2010. They have been legally represented and they have negotiated terms of settlement which they requested a mediator to sign. Subsequently the company has offered to pay by instalments but has yet to pay anything it can to Ms Dawson

Determination

[12] I therefore grant the application for compliance. Pursuant to s 137 of the Act, Top Freight Ltd is ordered to pay Michelle Dawson the sum of \$10,000 without deduction. The company is ordered to make that payment no later than 5 pm on Wednesday 8 December 2010.

[13] Any failure to comply with this order may be met by an application to the Employment Court which, upon being satisfied that any person has failed to comply with a compliance order made by the Authority, may give relief. This may include a fine imposed on the party in default in a sum not exceeding \$40,000 and an order that the property of the party in default be seized and sold to pay the amount owing.

[14] Ms Dawson is entitled to a contribution to her costs incurred in bringing this application, a step which should not have been necessary to take. Ms Dawson is also to be reimbursed the filing fee of \$71.56 paid to the Authority.

[15] Top Freight Ltd is ordered to pay to Ms Dawson costs of \$375 and \$71.56 as an expense.