

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 156
3200599

BETWEEN	DEEPAK DHIMAN Applicant
AND	DEVINDER MANN First Respondent
AND	NAANAK LIMITED (IN LIQUIDATION) Second Respondent

Member of Authority:	Eleanor Robinson
Representatives:	John Wood and Amani Bashay for the Applicant No appearance for Respondent
Investigation Meeting:	28 March 2023 at Auckland
Determination:	28 March 2023

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] The Applicant, Mr Deepak Dhiman, has applied to the Authority under s 137 of the Employment Relations Act 2000 (the Act) for an order requiring the First Respondent, Mr Devinder Mann, to comply with the terms of the determinations given by the Authority, Determination [2022] NZERA 510 and Determination [2022] NZERA 593.

[2] In the determination [2022] NZERA 510 which was issued on 6 July 2022, the Authority ordered Mr Mann to pay Mr Dhiman the sums of:

- (i) \$69,981.00 gross in respect of arrears of wages;
- (ii) \$28,153.14 gross in respect of arrears of holiday pay; and
- (iii) Interest on the above amounts since the arrears fell due to be paid.

[3] In the determination [2022] NZERA 593 which was issued on 14 November 2022., the Authority ordered Mr Mann to pay Mr Dhiman the sum of \$5,375.00 as a contribution to his costs and the Authority filing fee of \$71.56.

[4] On 22 November 2022 Mr Dhiman applied to the Authority for a Compliance Order, claiming that Mr Mann has not paid him any of the monies to which he was entitled under the determination.

Note

[5] No Statement in Reply having been received from the Respondent, the Authority instructed a process server to serve Mr Dhiman's Statement of Problem at Mr Mann's home address. A letter advising him that the Statement in Reply was overdue to be filed was delivered to the same address and signed as received by Mr Mann.

[6] The Notice of Investigation was delivered to the same address on 15 March 2023 and was signed for by a person present at the address.

[7] I am satisfied that Mr Mann had notice of the Statement of Problem application and the Notice of Investigation.

[8] During a case management conference held on 22 March 2023 Mr Mann stated that he would be taking notes and recording the Investigation Meeting. He was advised that he was welcome to make written notes, but that recording of Authority investigation meetings was not allowed. Mr Mann advised he would make a record for submission to the Press notwithstanding that advice.

[9] There was no appearance for Mr Mann at the Investigation Meeting and an Authority Support Officer was unable to contact him on the day of the Investigation Meeting.

[10] Given the difficulties encountered in obtaining cooperation in the Authority's investigations at any stage from Mr Mann, I was satisfied that no good cause had been shown for its failure to attend and I consequently proceeded with the Investigation Meeting pursuant to clause 12 of Schedule 2 of the Act.

Compliance Order

[11] I am satisfied from the evidence provided by Mr Dhiman and Mr Sunny Sehgal who supported Mr Dhiman that Mr Mann has not complied with the terms of the Authority's determinations of 6 October and 14 November 2022. It is just in the circumstances for an order to be made requiring Mr Mann to comply with the Authority's determination.

[12] Mr Mann is ordered to pay Mr Dhiman the following sums:

In respect of Determination [2022] NZERA 510 the following sums:

- (i) \$69,981.00 gross in respect of arrears of wages within 14 days of the date of this determination;
- (ii) \$28,153.14 gross in respect of arrears of holiday pay within 14 days of the date of this determination; and
- (iii) Interest on the above amounts since the arrears fell due to be paid until they are paid in full. Interest is payable in accordance with Schedule 2 of the Interest on Money Claims Act 2016. A calculator to assist in the calculation of interest is available on the Ministry of Justice website.

In respect of Determination [2022] NZERA 593 the following sums:

- (i) \$5,375.00 in respect of a contribution to costs; and
- (ii) \$71.56 in respect of the Authority filing fee.

Penalty

[13] Mr Wood on behalf of Mr Dhiman applied for a penalty, however the Act does not provide for a penalty in respect of compliance orders for an Authority determination.

Costs

[14] There was no appearance on the part of Mr Mann and the Investigation meeting took less than half a day.

[15] The normal tariff in the Authority for a full day of investigation meeting at the date of filing is \$4,500.00. The Applicant has submitted that a costs award of \$1,125.00 is appropriate in this matter, based upon a quarter day investigation meeting. I accept this submission and so order.

[16] **Accordingly Mr Mann is ordered to pay Mr Dhiman the sum of \$1,125.00 towards its legal costs, pursuant to clause 15 of Schedule 2 of the Act.**

[17] **Mr Mann is also ordered to pay the Authority filing fee of \$71.56 on this compliance application.**

Effect of further non-compliance

[18] Mr Mann is advised that if he does not observe or comply with this Compliance Order the Employment Court may do 1 or more of the following pursuant to s 140 (6) of the Act:

...

(c) order that the person in default be sentenced to imprisonment for a term not exceeding 3 months;

(d) order that the person in default be fined a sum not exceeding \$40,000;

(e) order that the property of the person in default be sequestered.

Eleanor Robinson
Member of the Employment Relations Authority