

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 359
5468700

BETWEEN

LETIO FAKAVA
Applicant

A N D

FUTURE PRINT AND
DESIGN LIMITED
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Louise Darroch, Counsel for the Applicant
John Coyle, Advocate for Respondent

Investigation Meeting: On consideration of papers

Date of Determination: 29 August 2014

DETERMINATION OF THE AUTHORITY

Orders:

- A. Future Print and Design Limited (Future Print) is ordered to comply with the Record of Settlement of 7 April 2014 by paying Mr Letio Fakava the sums owed by instalments of \$1000 on or before 20 September 2014, \$1000 on or before 20 October 2014, \$1000 on 20 November 2014 with a final payment of \$500 plus all holiday pay owing at the date of termination of Mr Fakava's employment on 20 December 2014.**
- B. Future Print is ordered to pay Mr Fakava a contribution towards his costs in the sum of \$250 plus reimbursement of the filing fee of \$71.56. These costs are to be paid in full by 20 September 2014.**

Employment relationship problem

[1] The parties entered into a Record of Settlement on 7 April 2014 which was signed by a mediator in accordance with the requirements of s.149 of the Employment Relations Act 2000 (the Act). Mr Fakava and Mr Dave Datt, Manager of Future Print signed the settlement.

[2] Under the terms of that Record of Settlement, Future Print was to pay Mr Fakava the sum of \$4000 by instalments of \$500 each on 30 April, 31 May, 30 June, 31 July, 31 August and 30 September with further instalments of \$350 each on 31 October, 30 November, and \$300 on 31 December.

[3] The Record of Settlement further provided:

The Employer will pay the Employee all outstanding holiday pay that was due at termination or will provide the Employee with the evidence of when payment was made. This will be actioned within 7 days of this settlement.

[4] Future Print has made one payment of \$500 to Mr Fakava under the Record of Settlement but no further payments. Mr Fakava seeks a compliance order against Future Print for the balance owing of \$3,500 together with holiday pay, interest and costs.

[5] The Record of Settlement is a final, binding and enforceable legal document. For mediated outcomes to be successful, parties need to have confidence that the terms of a s.149 Record of Settlement can and will be enforced by the Authority.

[6] The parties were given the opportunity to provide further information to the Authority with respect to the application for compliance order. Future Print provided a set of accounts for the year ended 31 March 2014, a letter from the Inland Revenue Department and a letter from the ASB. I am satisfied that Future Print's financial position situation requires me to order payment to Mr Fakava by instalments in accordance with s.138(4A) of the Act.

[7] Accordingly, Future Print is ordered under s.137 of the Act to pay Mr Fakava the remaining amount of \$3500 plus holiday pay owed under the Record of Settlement by instalments of \$1000 on or before 20 September 2014, \$1000 on or before 20 October 2014, \$1000 on or before 20 November 2014 with a final payment of \$500

plus all holiday pay owing at the date of termination of Mr Fakava's employment on or before 20 December 2014.

[8] Failure by Future Print to comply with the compliance order may result in Mr Fakava applying to the Employment Court to exercise its powers under s.140(6) of the Act. Remedies can include an order that the person in default be sentenced to imprisonment for a term not exceeding 3 months and /or a fine not exceeding \$40,000.

Costs

[9] Mr Fakava as the successful party seeks a contribution towards his costs. I consider in the circumstances costs of \$250 to be appropriate plus reimbursement of the filing fee of \$71.56. These costs are to be paid in full by 20 September 2014.

Anna Fitzgibbon
Member of the Employment Relations Authority