

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 404
3059775

BETWEEN KIERAN FERGUSON
 Applicant

AND BW SILVESTER LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: Roland Samuels for Applicant
 No appearance for Respondent

Investigation Meeting: On the papers

Determination: 8 July 2019

DETERMINATION OF THE AUTHORITY

- A. BW Silvester Limited is ordered to comply with the orders set out in the determinations dated 21 February and 1 May 2019 within 14 days of the date of this determination.**
- B. BW Silvester Limited is ordered to pay interest on the sums payable in accordance with Schedule 2 of the Interest on Money Claims Act 2016.**
- C. Costs are reserved.**

Employment relationship problem

[1] On 21 February 2019 I issued an oral determination finding Mr Ferguson had established personal grievances and accordingly made orders for the payment of \$11,515 for lost wages and compensation.¹

[2] I reserved the issue of costs and invited the parties to resolve that matter between them. Ultimately I issued a further determination on costs ordering BW Silvester Limited to pay Mr Ferguson the sum of \$3,071.56 as a contribution to his costs.²

[3] BW Silvester has failed to comply with the orders made against it and Mr Ferguson now seeks an order for compliance and interest on the monetary orders in relation to both determinations.

[4] Mr Ferguson lodged these proceedings on 29 April 2019. The statement in reply was served on BW Silvester Limited's registered office at 4.17 pm on Wednesday 22 May 2019. BW Silvester did not lodge a statement in reply and has failed to engage in any way with the Authority regarding these proceedings.

[5] The applicant has consented to this matter being dealt with on the papers currently before the Authority under s 174D of the Employment Relations Act 2000 (the Act).

Compliance Orders

[6] Under s 137(1)(b) of the Act the Authority has the power to order compliance with any order or determination of the Authority. I am satisfied BW Silvester Ltd has failed to comply with the orders made in the determinations dated 21 February and 1 May 2019.

[7] BW Silvester Limited is ordered to comply with the orders set out in the determinations dated 21 February and 1 May 2019 within 14 days of the date of this determination. For the sake of completeness BW Silvester is ordered to pay to Mr Ferguson the following amounts:

- a) Lost wages of \$4,545 net under s 123(1)(b) of the Act;

¹ *Ferguson v BW Silvester Limited* [2019] NZERA 95.

² *Ferguson v BW Silvester Limited* [2019] NZERA 253.

- b) \$7,000 under section 123(1)(c)(i) of the Act; and
- c) \$3,071.56 as a contribution to costs.

Interest

[8] The Authority has the power to award interest under clause 11 of the Second Schedule of the Act. Interest is to reimburse someone for the loss of use of monies to which there is an established entitlement.

[9] It is appropriate where a person has been deprived on the use of money to make an award for interest. BW Silvester Limited is ordered to calculate and pay interest within 14 days of the date of this determination on the following amounts:

- a) \$4,515;
- b) \$7,000; and
- c) \$3,071.56.

[10] Interest on a) and b) above is to be calculated from 21 March 2019 until it is paid. Interest on c) above is to be calculated from 28 May 2019 until it is paid.

[11] 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.³

Further non-compliance

[12] The Authority's orders may be the subject of a further application for compliance in the Employment Court which is empowered to impose penalties for continuing non-compliance which include imprisonment, fines and the sequestration of property.

[13] An alternative procedure arises under s 141 of the Act, enabling a party to bypass the compliance process by obtaining a certificate of determination from the Authority and filing it in the District Court so that it can be enforced using the remedies available under the District Courts Act 1947 and the District Court Rules 2014. Those remedies are more diverse and more effective than remedies which may

³ www.justice.govt.nz/fines/civil-debt-interest-calculator

be available in the Employment Court.⁴ I understand certificates of determination for both matters have been supplied to Mr Ferguson.

Costs

[14] Costs on this application are reserved. Mr Ferguson is directed to lodge a memorandum in relation to the costs he seeks on this application including a breakdown of when and how the costs were incurred. BW Silvester will have 3 days from receipt of the memorandum to respond.

Vicki Campbell
Member of the Employment Relations Authority

⁴ *Broeks v Ross* EmpC Auckland AC36A/09, 11 November 2009; *Denyer v Peter Reynolds Mechanical Limited trading as The Italian Job Service Centre* [2015] NZEmpC 41.