

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 57/08  
5110823

BETWEEN      MONIQUE FROST, CRAIG McKAY,  
                         DAVY BERNARDO & KRISTIE  
                         GIRVAN  
                         Applicants

AND              OPENEYE DISPLAYS NZ LIMITED  
                         Respondent

Member of Authority:      Leon Robinson

Representatives:              Applicants In Person  
   No attendance by Respondent

Investigation Meeting:      19 February 2008

Determination:                20 February 2008

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**DETERMINATION OF THE AUTHORITY**

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**Application for Compliance**

[1]    The applicants Monique Frost, Craig Mckay, Davy Bernardo and Kristie Girvan ask the Authority to enforce the terms of a record of settlement dated 21 November 2007 and made under section 149 of the Employment Relations Act 2000 ("the Record of Settlement").

[2]    Openeye Displays NZ Limited does not attend the investigation meeting today to defend the application. Accordingly, I proceed on the basis that the application is undefended. I have today ascertained that Openeye Displays NZ Limited remains a registered company.

**Non-compliance**

[3]    I am satisfied that Openeye Displays NZ Limited is in breach and has not complied with clauses 4, 6 and 7 of the Record of Settlement which provide:-

4. *Open Eye Displays NZ Ltd will pay a minimum of 30% outstanding wage arrears, statutory entitlements and expenses due to each Applicant by 30th November 2007. This amount will be paid to the Applicants by way of direct credit.*

6. *Gareth Croy on behalf of Open Eye Displays NZ Ltd agrees to liaise directly with Jill Schofield-Coyle regarding payments of outstanding wages and expenses for the Applicants. The first contact will take place on Friday 23rd November 2007 and continue on a weekly basis until all outstanding amounts are fully paid.*

7. *Gareth Croy will provide a written reference for Kristie Girvan within 7 days of the date hereof.*

[4] I am satisfied too that the situation of compliance in respect of those same clauses continues today.

[5] Clause 5 of the Record of Settlement provides:-

5. *Open Eye Displays NZ Ltd undertakes to pay the rest of the outstanding wages and expenses to the Applicants as soon as monies due to Open Eye Displays NZ Ltd are paid. Open Eye Displays NZ Ltd undertakes to pay outstanding amounts to each Applicant as monies become available to do so.*

[6] It is obvious that the applicants seek satisfaction of clause 5 being payment of amounts due and owing to them. Unfortunately, there was no timeframe specified as the period during which there must be satisfaction.

[7] It is certain however that Openeye Displays NZ Limited takes no part in this investigation and by the Authority's regulations, having failed to lodge a statement in reply, it is not permitted to defend the matter without leave. I consider it proper in that regard to infer by its failure that it does not challenge the allegation that it has not paid.

[8] Nor is it heard to say by defending the matter that it has not since the execution of the Record of Settlement, received monies sufficient to discharge its respective obligations of payment to each applicant. Accordingly, I find on a default basis, that since the Record of Settlement was signed, it has received monies available to it to

pay the Applicants. I do not proceed on a formal proof basis requiring the Applicants to prove receipt of funds by Openeye Displays NZ Limited for that is not a matter they can establish. Nor is it an option for the Authority in terms of its powers of investigation, because of Openeye Display NZ Limited's non-cooperation.

[9] Consequentially, I find that Openeye Displays NZ Limited has breached clause 5 of the Record of Settlement and also, that the situation of non-compliance continues today.

[10] Records of Settlement are to be honoured in every instance. I consider it just that I act to underscore the objectives of the Employment Relations Act 2000 in relation to informal settlements and Records of Settlement by intervening to enforce compliance with the Record of Settlement in accordance with its terms.

[11] While there is no time period specified for satisfaction of clause 5, sub-section 137(3) of the Employment Relations Act 2000 requires the Authority to specify a time within which any order of compliance is to be obeyed. That seems to me to be a provision of particularly relevant application in this instance.

## Order

[12] **I order Openeye Displays NZ Limited to comply with all provisions specified in the Record of Settlement, and to do so by 19 March 2008.**

Leon Robinson  
**Member of Employment Relations Authority**