



# New Zealand Employment Relations Authority Decisions

You are here: [NZLII](#) >> [Databases](#) >> [New Zealand Employment Relations Authority Decisions](#) >> [2011](#) >> [2011] NZERA 302

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

---

## Garside v Relish Hospitality Limited [2011] NZERA 302; [2011] NZERA Auckland 210 (17 May 2011)

Last Updated: 26 May 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 210 5340034

BETWEEN

TAMARIN GARSIDE Applicant

AND

RELISH HOSPITALITY  
LIMITED  
Respondent

Member of Authority:

Eleanor Robinson

Representatives:

Mark Nutsford, Advocate for Applicant  
No appearance for Respondent

Investigation Meeting:

17 May 2011 at Auckland

Determination:

17 May 2011

### Employment Relationship Problem

#### DETERMINATION OF THE AUTHORITY

On 16 November 2010 a Record of Settlement ("the Settlement") was signed under [s 149](#) of the [Employment Relations Act 2000](#) ("the Act"). The parties to the Settlement were the Applicant, Ms Tamarin Garside, and the Respondent, Relish Hospitality Limited ("Relish"). The Settlement was signed by Mr David Williams, a Shareholder of Relish. The Record was also signed by a Mediator employed by the Department of Labour.

*Within 14 days of the date of this agreement, the respondent will pay to the applicant \$1000 without deduction, pursuant to [s. 123\(1\)\(c\)](#) of the [Employment Relations Act 2000](#).*

[3] The Settlement was certified under [s 149](#) of the Act by the Mediator. That certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms:

(i) were final, binding and enforceable; and

(ii) could not be cancelled; and

(iii) could not be brought before the Authority or the court for review or appeal, except for the purposes of enforcing those terms.

[4] Relish confirmed it had received a copy of the Statement of Problem, which was lodged with the Authority on 5 April 2011; however no Statement in Reply was received by the Authority, despite reminders to Relish that it had not been received.

[5] The Authority set a hearing date of 17 May 2011, which was communicated to the parties by a Notice of Investigation Meeting. There was no appearance for Relish at the Investigation Meeting

#### **Determination**

[6] From the evidence available to the Authority, I am satisfied that Relish has failed to comply with the Settlement.

**[7] In order to effect compliance with clause 2 of the Settlement, I therefore order Relish to pay Ms Garside, no later than 14 days from the date of this determination, the sum of \$1,000 pursuant to [s 123 \(1\)\(c\)](#) of the Act.**

[8] Interest may be awarded on money payable under a mediated settlement,<sup>1</sup> subject to a discretion which must be exercised as the justice of the case requires.

[9] In this case there is no dispute about the obligations on the parties as a result of the Settlement. As a result of the failure of Relish to comply with the terms of the Settlement, Ms Garside has been deprived of the use of the sum of money owed. I am satisfied that interest should be awarded in order to put Ms Garside in the position she would have been in had Relish complied with the terms of settlement.

**[10] I therefore make a further order that Relish pay interest on the sum set out in paragraph [7] above at the rate of 7.5% for the period from 30 November 2010 until the date of payment.**

#### **Costs**

[11] Ms Garside has been successful in gaining the compliance order she applied for and seeks costs in that event. Ms Garside is entitled to a contribution to her representative's costs. The matter involved less than a half day of meeting time. The principles applicable to awards of costs in the Authority are well established. It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>2</sup> that costs are modest. A tariff based approach is that usually adopted by the Authority, which has the discretion to raise or lower the tariff, depending on the circumstances.

[12] Accordingly, Relish is ordered to pay Ms Garside \$1,000.00 costs, pursuant to clause 15 of Schedule 2 of the Act. Relish is to pay that amount directly to Ms Garside's representative, and is to include with this payment a further \$71.56, in reimbursement of the fees for lodging her application.

**Eleanor Robinson**

**Member of the Employment Relations Authority**

---

NZLII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#)

URL: <http://www.nzlii.org/nz/cases/NZERA/2011/302.html>