

**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

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] 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.

[2] The issue now brought before the Authority by Ms Garside is that Relish has not complied with clause 2 of the Settlement, which states:

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)(i) 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)(i) of the Act.

[8] Interest may be awarded on money payable under a mediated settlement,¹ 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.

¹ *House v Independent Power NZ Ltd* AA 250/04, 10 August 2004

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*² 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

² [2005] 1 ERNZ 808