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Gowans v Marshall Projects Nelson Ltd CA 67/07 (Christchurch) [2007] NZERA 527 (21 June 2007)

Last Updated: 15 November 2021

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

CA 67/07 5079199

BETWEEN	KELLY GOWANS Applicant
AND	MARSHALL PROJECTS NELSON LIMITED Respondent

Member of Authority: Philip Cheyne

Representatives: Kelly Gowans in person

No appearance for respondent Investigation Meeting: 19 June 2007 at Nelson Determination: 21 June 2007

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Kelly Gowans worked for a company called Beautiful Nails & Body Limited. Haley Marshall is the director and majority shareholder in that company. The company and Ms Gowans entered into a record of settlement under [section 149](#) of the [Employment Relations Act 2000](#) on 26 January 2006. The settlement required the company to pay weekly by direct credit to Ms Gowans the sum of \$30.00 commencing on 2 February 2006. The payments should have continued until the sum agreed was paid in full. The problem is that the company has not fully complied with its obligations under the settlement agreement.

[2] Ms Gowans identified the respondent as Haley Marshall although the attached record of settlement shows the employer as Beautiful Nails & Body Limited. Properly, the company and not Ms Marshall should be identified as the respondent in these proceedings. Records at the Companies Office show that the company changed

its name on 28 April 2007 to Marshall Projects Nelson Limited. Accordingly I amend the proceedings so that the respondent is shown as Marshall Projects Nelson Limited.

No appearance by the respondent

[3] Haley Marshall lodged a statement in reply by which she accepts that money is owed but says that it cannot be paid because of financial constraints. Arrangements were made for an investigation meeting. I am satisfied that

the statement of problem and the notice of meeting have been properly served on the respondent through its director, Ms Marshall.

[4] On 18 June 2007 the Authority received a fax from Ms Marshall. It says that Ms Marshall is not able to come to the investigation meeting because she cannot find satisfactory cover for clients and she thinks it is best not to lose sales. As advised, Ms Marshall did not attend the investigation meeting. I was satisfied that there was no good reason for the respondent's non attendance so I proceeded with the investigation meeting.

Determination

[5] Ms Gowans accepted that she is owed \$463.00 which includes the cost of lodging the present application. That is the figure given in the fax by Ms Marshall as the sum still owed to Ms Gowans. If the respondent had complied with the record of settlement Ms Gowans would have received \$393.00 by now.

[6] Ms Marshall provided an extract from what is apparently the respondent's statement of accounts for the year ending 31 March 2005. All that does is demonstrate that a loss was incurred in the financial year prior to the company entering into the record of settlement. I have not been given anything to support the respondent's assertion of continuing financial constraints. What looks to be the case is that the respondent has preferred to meet other obligations rather than comply with the record of settlement it entered into. In the meantime, Ms Gowans has become understandably frustrated by her former employer's attitude to its legal obligations. The respondent is fortunate that Ms Gowans has not claimed a penalty against it.

[7] I am satisfied that the record of settlement is enforceable and that the respondent has breached its terms. Ms Gowans is entitled to a compliance order requiring the

respondent to pay the \$393.00 under the terms of the record of settlement and a further order requiring the respondent to pay \$70.00 as the costs of lodging this application.

Orders

[8] Marshall Projects Nelson Limited is ordered to pay Ms Gowans \$70.00 in costs within 14 days from the date of service on the respondent of this determination.

[9] Pursuant to [section 137](#) of the [Employment Relations Act 2000](#) Marshall Projects Nelson Limited is ordered to comply with the record of settlement by paying

\$393.00 to Ms Gowans within 14 days from the date of service on the respondent of this determination.

[10] This determination is to be served on Marshall Projects Nelson Limited by the Authority. Attached to this determination is a copy of [section 140](#) (6) of the [Employment Relations Act 2000](#) which specifies the consequences of any failure by the respondent to comply with the compliance order made above.

P Cheyne

Member of Employment Relations Authority