

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Puti Hauraki (Applicant)  
**AND** Te Awa o Te Ora Trust (Respondent)  
**REPRESENTATIVES** Jeff Goldstein, Counsel for Applicant  
Ian Thompson, Advocate for Respondent  
**MEMBER OF AUTHORITY** Helen Doyle  
**TELECONFERENCE** 19 October 2005  
**DATE OF DETERMINATION** 20 October 2005

DETERMINATION OF THE AUTHORITY

*The application before the Authority*

[1] In my determination dated 14 September 2005, CA 7A/05, I found that the applicant had a personal grievance and awarded her lost wages and compensation.

[2] Mr Thompson on behalf of the respondent wrote to the Authority by letter dated 4 October 2005 and advised that the respondent did not have the financial ability to pay the sums awarded in one lump sum.

[3] He asked that the Authority order payment by instalment under section 123 subsection (2) of the Employment Relations Act 2000.

[4] This subsection was inserted as from 1 December 2004 by section 42 (2) of the Employment Relations Amendment Act (No 2) 2004.

[5] Section 123 (2) provides:

*When making an order under subsection 1 (b) or (c), the Authority or the Court may order payment to the employee by instalments, but only if the financial position of the employer requires it.*

[6] Mr Goldstein on behalf of the applicant advised that his instructions were that the applicant did not consent to payment by instalments of the amounts awarded to her.

*Submissions*

[7] I held a telephone conference with Mr Thompson and Mr Goldstein on 19 October 2005 about the application. It was agreed that I should deal with the matter on the basis of oral submissions

during the telephone conference rather than the parties incurring further costs by the filing of submissions or attending an investigation meeting.

[8] It is apparent from the financial statements of the Trust for the period 1 April 2004 to 31 March 2005 provided to me shortly after the investigation meeting that the respondent has an investment in excess of the amount awarded to the applicant.

[9] Mr Thompson indicated that there was either difficulty accessing the investment funds and/or they were earmarked for other projects. I accept Mr Goldstein's submission, particularly with respect to the earmarking for other projects, that this relates to competing priorities than ability to pay.

[10] Even if there was difficulty for the respondent in accessing those investment funds it is clear from the Trust account balances that there are other funds available to the respondent for its use from an overdraft facility. These funds are also in excess of the sums awarded by the Authority.

### ***Determination***

[11] The Authority may only order payment of money under section 123 (2) of the Employment Relations Act 2000 to the employee by instalments if the financial position of the employer requires it.

[12] I am not satisfied on the basis of the financial records of the respondent, or the submissions during the telephone conference with respect to this matter, that the financial position of the Trust is such that an order should be made for payment of the amounts awarded by the Authority to the applicant by instalments.

[13] The application by the respondent under section 123(2) of the Employment Relations Act 2000 is not granted.

Helen Doyle  
Member of Employment Relations Authority