

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 105
3023412

BETWEEN ABBY HILLIER
 Applicant

A N D MEDEU INTERNATIONAL
 LIMITED trading as BLD CAFE
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Emma Moss, Advocate for Applicant
 Abdrakhman Assilbekov, Director of Respondent

Investigation Meeting: On the papers

Date of Determination: 29 March 2018

**DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Employment relationship problem

[1] In a substantive determination of the Authority on 16 October 2017, Medeu International Limited trading as BLD Café (“Medeu”) was found to have unjustifiably dismissed Ms Abby Hillier from her employment. Medeu was ordered to pay Ms Hillier within twenty one days of the date of the determination the following sums:

- \$5,000 compensation under s 123(1)(c)(i) of the Employment Relations Act 2000 (“the Act”) for humiliation, loss of dignity and injury to feelings in respect of her unjustifiable dismissal
- \$5,320.35 gross in lost remuneration under s 128 of the Act

- \$886.72 gross being two weeks' notice under the terms of Ms Hillier's employment agreement
- \$402.41 gross holiday pay owing to her.¹

[2] None of the sums owing to Ms Hillier pursuant to the Authority's determination have been paid by Medeu.

[3] On 13 November 2017, the Authority issued a costs determination.² Medeu was ordered to pay a contribution towards Ms Hillier's costs in the sum of \$1,000 together with the filing fee of \$71.56 within fourteen days of the date of the determination.

[4] Medeu failed to pay the costs ordered by the Authority to Ms Hillier.

Application for compliance order

[5] On 18 December 2017, Ms Hillier filed an application in the Authority seeking a compliance order that Medeu comply with the Authority's determinations dated 16 October 2017 and 13 November 2017. A statement in reply was filed by Medeu on 2 February 2018 in which Medeu revisited matters which had been dealt with during the course of the Authority's investigation and its substantive determination.

Investigation Meeting

[6] It was agreed that this was a matter that could be dealt with "on the papers".

Financial information regarding Medeu's ability to pay

[7] The director of Medeu, Mr Abdrakhman Assilbekov was requested to provide the following financial information in respect of Medeu: the profit and loss statements, balance sheets and cash flow statements for the last two years up to 8 March 2018. This information was directed by the Authority to be provided by 14 March 2018. Ms Hillier was given the opportunity to respond. A document was emailed to the Authority headed up "IR4 Companies Income Tax Return" which provided no detailed information for the Authority. A one page "profit and loss"

¹ [2017] NZERA Auckland 323.

² [2017] NZERA Auckland 352.

statement, which appears to have been generated by Medeu itself, was provided. The balance sheets and cash flow statements were not provided. Mr Assilbekov was given the opportunity to provide this information outside the directed time frames but failed to do so.

[8] The information that has been provided is inadequate and does not assist the Authority in assessing whether or not Medeu is in a financial position to comply with the Authority's determinations.

[9] In submissions on behalf of the applicant, Ms Moss questions the usefulness of the limited financial information which has been provided and has also submitted that it appears Mr Assilbekov travelled overseas during 2018 during the period of non-compliance with the determinations of the Authority. Mr Assilbekov failed to respond.

[10] I am satisfied that Ms Hillier is entitled to a compliance order.

Order

[11] Under s 137 of the Act and from the date of this determination, Medeu is ordered to comply with the Authority's determinations of 16 October 2017 and 13 November 2017. Medeu is ordered to pay Ms Hillier the following sums by 4 pm on 19 April 2018:

- \$5,000 compensation
- \$5,320.35 gross in lost remuneration
- \$886.72 gross being two weeks' noticed owing
- \$402.41 gross holiday pay owing
- \$1,071.56 in costs

These sums total \$12,681.04.

[12] If Medeu fails to comply with the requirements of this order, Ms Hillier has the right under s 138(6) of the Act to apply to the Employment Court for the exercise of its powers in such circumstances.

Costs

[13] Medeu is directed to pay to Ms Hillier the amount of \$71.56, being the fee for lodging this application in the Authority, by 4 pm on 19 April 2018.

Certificate of Determination

[14] I direct that pursuant to regulation 26 of the Employment Relations Authority Regulations 2000, Ms Hillier be provided with a certificate of determination sealed with the seal of the Authority recording that Medeu is ordered to pay Ms Hillier the total sum of \$12,681.04 plus the lodgement fee of \$71.56 by 4 pm on 19 April 2018.

Anna Fitzgibbon
Member of the Employment Relations Authority