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Hills v Jay & Bee (2006) Limited (Wellington) [2016] NZERA 551; [2016] NZERA Wellington 136 (8 November 2016)

Last Updated: 2 December 2016

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2016] NZERA Wellington 136
5634589

BETWEEN JULIE HILLS Applicant

AND JAY & BEE (2006) LIMITED Respondent

Member of Authority: M B Loftus

Representatives: Jenny Murphy, Advocate for Applicant

No appearance for Respondent Investigation Meeting: 8 November 2016 at Palmerston North Submissions Received: At the investigation meeting Determination: 8 November 2016

ORAL DETERMINATION OF THE AUTHORITY

[1] This is an application for an order the respondent, Jay & Bee (2006) Limited

(J&B), comply with the requirements of two earlier determinations.¹

[2] The first was issued on 29 April 2016 and found Ms Hills had a personal grievance in that she had been unjustifiably dismissed by J&B. There was also a conclusion Ms Hills had money improperly deducted from her wages. J&B was ordered to make various payments totalling \$9,194.95. 2 Costs were reserved but the parties were unable to agree them. That led to a subsequent order Jay & Bee pay Ms Hills a further \$3,571.56.³

[3] J&B responded to this claim with two short letters dated 9 August. It advised it was facing financial hardship but trying to pay the money via a series of weekly

¹ *Hills v Triple SSS Limited & Anor* [2016] NZERA Wellington 51 and *Hills v Jay & Bee (2006) Limited* [2016] NZERA Wellington 110

² [2016] NZERA Wellington 51 at [55]

³ [2016] NZERA Wellington 110 at [10]

payments. It also referred, as it had when responding to the costs claim, to its view the substantive determination was wrong.

[4] Ms Hills accepts J&B has been paying by instalment with some \$2,300 being paid via a number of deposits to her bank account. The deposits are of various amounts. Ms Hills says she has not entered into an agreement under which payment may be made by instalment and therefore seeks an order Jay & Bee comply with the earlier determinations and pay the balance due - \$10,466.51.

[5] J&B was not represented at the investigation with Mr Warren, its sole director and shareholder, having sent a note advising he would not attend due to unexplained *personal reasons*. That raised the question of whether or not I proceed.

[6] There can be no doubt J&B is aware of both the claim and the investigation meeting given the notice of hearing was attached to Mr Warren's note ([5] above). The notice of meeting includes advice that should the respondent not attend the Authority may, without hearing from the respondent, proceed and issue a

determination in favour of the applicant.⁴ Given that, J&B's failure to participate

properly in the Authority's process, the absence of any detail about why Mr Warren felt he could not attend and the absence of an adjournment request I consider it appropriate I continue.

[7] Given evidence supporting the claim I conclude the amount sought remains outstanding. Here I note Mr Warren says the outstanding balance is \$9,856.51 but Ms Hills chose to give evidence while Mr Warren didn't. I therefore accept Ms Hills' calculation as correct.

[8] While recognising the evidence J&B has made some attempt to pay I must also recognise Ms Hills has not agreed to instalment payments. In the absence of agreement an instalment payment plan would require an order of the Authority.⁵

There is no such order.

[9] I conclude there has been default given the time that has passed since the making of the earlier orders and the absence of either an order or application payment

be allowed by instalment.

⁴ Note 2 to Form 8 of the [Employment Relations Authority Regulations 2000](#)

⁵ [Sections 123\(2\)](#) or [138\(4A\)](#) of the [Employment Relations Act 2000](#) (the Act)

[10] The partial payments and things said during the initial investigation at which J&B was present suggest it may be able to provide evidence warranting an order payment be made by instalment.⁶ That said, its failure to attend and adduce that evidence means that is not an option available to me so full payment must be ordered.

[11] Ms Hills also seeks an interest on any amount ordered. The Authority is a creature of statute and can only do what it has jurisdiction to do. I see nothing which allows me to award interest in a compliance setting⁷ and Ms Murphy cannot point me to such a provision. I therefore decline to do so.

[12] Finally there are the costs Ms Hills incurred in making this application. Normally costs follow the event and the Authority will use a daily tariff approach when addressing such a claim.⁸ The normal starting point is \$3,500 per day and from there adjustment may be made depending on the circumstances.

[13] The investigation, including delivery of an oral determination, will not take long – less than an hour, though that is largely due to J&B's absence. Ms Hills always proceeded on an assumption J&B would not attend and accordingly the preparation was minimal and this is reflected in her claim, \$460, which applying the tariff is commensurate with the time taken. There was also the cost of a document server which was required as a result of J&B's less than helpful approach to the claim and the filing fee of \$71.56. The total sought is \$623.56 which I consider reasonable in the circumstances.

Conclusion and Orders

[14] For the above reasons Jay & Bee (2006) Limited will be required to comply with the earlier determinations and pay the outstanding monies. Jay & Bee (2006) Limited is therefore ordered to pay \$10,466.51 (ten thousand, four hundred and sixty six dollars and fifty one cents) gross to Julie Hills.

[15] Some of this amount should have PAYE deducted. That may be done prior to payment and the relevant amount forwarded to the Inland Revenue Department.

⁶ Section 138(4A) of the Act

⁷ [Sections 137](#) and [138](#) of the [Employment Relations Act 2000](#)

⁸ refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [\[2005\] NZEmpC 144](#); [\[2005\] ERNZ 808](#)

[16] In addition J&B is to pay a further \$623.56 (six hundred and twenty three dollars and fifty six cents) being a contribution toward the costs Ms Hills incurred in making this application.

[17] The payments ordered in [14] and [16] above are to be made no later than

4.00pm Tuesday 22 November 2016.

[18] In closing I caution J&B that failure to comply with the above orders may result in further consequences including, but not limited to, the imposition of fines and/or the sequestration of property.

[19] Finally I note my comments about the possibility J&B might have been able to justify an instalment payment regime had it attended. This raises the possibility of either a reopening application or an approach from J&B to Ms Hills that she enter

into such an arrangement. If the later occurs I strongly suggest she consider the request.

M B Loftus

Member of the Employment Relations Authority

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