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Ho v Printpac Company Limited (Auckland) [2011] NZERA 458; [2011] NZERA Auckland 300 (11 July 2011)

Last Updated: 5 August 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011]NZERA Auckland 300 5343367

BETWEEN MICHAEL HO

Applicant

AND PRINTPAC COMPANY

LIMITED Respondent

Member of Authority: Eleanor Robinson

Investigation Meeting 8 July 2011 at Auckland by telephone conference

Determination: 11 July 2011

DETERMINATION OF THE AUTHORITY

Application for a Compliance Order

[1] On 24 February 2011 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, Mr Michael Ho, and the Respondent, Printpac Company Limited ("Printpac"). The Settlement was signed by Mr Ho and Mr Samuel Wong, Director and Shareholder of Printpac. The Record was also signed by a Mediator employed by the Department of Labour.

[2] The issue which had been brought before the Authority by Mr Ho was that Printpac had not complied with clauses 2 and 3 of the Settlement, which state:

i. Printpac Company Limited will pay to Michael Ho outstanding wages and holiday pay of \$3,250 (PAYE has already been deducted from this amount) and \$10,368 (PAYE is to deducted from this amount), by direct credit, as follows:

i. \$1,000 by or on 31 March 2011;

ii. \$2,000 by or on 30 April 2011; and

iii. \$2,000 by or on the last day of each subsequent calendar month until the full amount has been paid.

ii. Printpac Company Limited will provide Michael Ho with the after tax calculation on the \$10,368, as set out in clause 2, by the 31st of March 2011.

[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:

a. were final, binding and enforceable; and

b. could not be cancelled; and

c. could not be brought before the Authority or the court for review or appeal, except for the purposes of enforcing those

terms.

[4] Printpac received a copy of the Statement of Problem, which was lodged with the Authority on 9 May 2011, and lodged a Statement in Reply on 15 June 2011.

[5] At the telephone conference meeting Mr Ho explained that Printpac had breached the Settlement following mediation in that he had received no payments as set out in the Settlement, nor had he received the after tax calculation on the amount of \$10,368.

[6] Mr Ho further explained that the amounts as set out in the Settlement related to outstanding wages and holiday pay dating back to 2010.

[7] Mr Wong said that he had agreed at mediation to pay the amounts as stipulated in the Settlement, but that financial difficulties since that time had prevented him from making the payments. Mr Wong requested more time to make the payments as he was in the process of realising assets.

Determination

[8] I observe that inability to pay is not determinative as to the issue of enforcement. Mr Wong's offer to make the payments upon the realisation of assets is evidence of some ability on his part to pay the outstanding amounts.

[9] From the evidence available to the Authority, I am satisfied that Printpac has failed to comply with the Settlement.

[10] In order to effect compliance with clause 2 of the Settlement, I therefore order Printpac to pay Mr Ho, no later than 14 days from the date of this determination, the outstanding sum of \$7,000.00.

[11] I further order to effect compliance with clause 2 of the Settlement, that Printpac make payments of \$2,000 at the end of July 2011 and each subsequent month until the full amount has been paid.

[12] In order to effect compliance with clause 3 of the Settlement, I order that Printpac provide Mr Ho with the after tax calculation on the \$10,369, no later than 14 days from the date of this determination.

[13] Mr Ho seeks reimbursement of his filing fee. I order that Printpac pay Mr Ho a further \$71.56 in reimbursement of the fees for lodging his application.

[14] For the information of Printpac, failure to comply with an order such as this one made by the Authority under [s 137](#) of the Act may provide a basis for an application to be made by Mr Ho to the Employment Court for enforcement of the order. Under [s140](#) of the Act, where the Court is satisfied that any person has failed to comply with a compliance order made under [s137](#), the Court may order remedies, including a fine not exceeding \$40,000 and/or the seizure of property and for the proceeds of sale to be distributed to the person enforcing the Authority's order.

[15] Mr Ho may alternatively seek to apply to the District Court for enforcement of this order. In this context I note that part 15 of the District Court Rules 2009 provides for orders for examination of the judgment debtor.

Costs

[16] As Mr Ho was not legally represented, there is no order for costs.

Eleanor Robinson

Member of the Employment Relations Authority