

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 102/09  
5137734

BETWEEN                      GAIL HOSKIN  
   Applicant

AND                              WAIORA TRAINING  
   LIMITED  
   Respondent

Member of Authority:      Robin Arthur  
  
Representatives:              David Collins for Applicant  
   Carol Trinick for Respondent  
  
Investigation Meeting:      On the papers  
  
Determination:                2 April 2009

---

**DETERMINATION OF THE AUTHORITY**

---

[1] Gail Hoskin has applied for an order requiring Waiora Training Limited to comply with the terms of a settlement agreement made on 6 March 2008. WTL agreed to pay her \$2500 in five instalments of \$500 over a four month period ending in August 2008. The payment was to be made as compensation under s123(1)(c)(i) of the Employment Relations Act 2000 (the Act).

[2] Some payments were made but not all. Ms Hoskin, through her representative, says she is still owed \$1500.

[3] The agreement had been certified by a Department of Labour mediator under s149 of the Act. The certification confirmed the final, binding and enforceable nature of the agreement. Section s149(4) of the Act allows for a penalty to be imposed by the Authority on a person who breaches a term of such an agreement. Ms Hoskin seeks a penalty on the basis that WTL breached a term by not paying the total amount due by the agreed final date of 6 August 2008.

[4] Ms Hoskin's representative lodged a statement of problem on 25 September 2008 but sought a delay in proceedings while he sought to negotiate further instalment payments. On 18 February 2009 he sought continuation of the proceedings.

[5] On 17 October 2008 WTL had lodged a statement in reply explaining that it had made payments of two \$500 instalments but was unable to make further payments due to extreme financial difficulties. It sought Ms Hoskin's agreement for an extension of time while it endeavoured to find the money to honour its commitment.

[6] By telephone conference with the parties' representatives on 26 March 2009 I sought further information on the amount of money that WTL had in fact paid to Ms Hoskin under the agreement.

[7] During that discussion the representatives also agreed that the matter of the compliance order could be determined on the papers rather than requiring the time and expense of an investigation meeting.

[8] Ms Trinick agreed to supply information on payments made to Ms Hoskin and the present state of WTL. She has now done so. From that information and what Ms Trinick told me during the telephone conference I understand the position to be as follows:

- (i) WTL paid Ms Hoskin a total of \$1500 in seven payments between 20 June 2008 and 10 December 2008;
- (ii) WTL is no longer trading and is currently subject to legal action by the Inland Revenue Department seeking to recover a substantial amount of taxes due and not paid;
- (iii) Ms Trinick, and WTL's other director Martin John Trinick, also face legal action from other creditors against them either in their personal capacity or against another company of which they are also directors. Those creditors include two banks, a finance company, and a building materials supplier.
- (iv) The amounts owed to those other creditors are substantial.
- (v) A forced sale of the Trinicks personal home has been met some but not all of their debts.

**Compliance order**

[9] On the basis of that information I find that WTL has an outstanding debt of \$1000 to Ms Hoskin and that Ms Hoskin is entitled to a compliance order for that amount.

[10] **Under s137 of the Act WTL is ordered to comply with the terms of settlement reached on 6 March 2008 by paying the sum of \$1000 remaining due to Ms Hoskin within 28 days of the date of this determination.**

[11] No purpose is served by ordering payment of the amount remaining due by instalments. There is no evidence that WTL would be likely to meet payments on an instalment basis.

[12] Mr Collins sought an order that Ms Trinick be ordered to personally pay the amount remaining due. I decline to make such an order. The settlement agreement was made with WTL, not her.

[13] I also decline to order a penalty for the breach. While there has clearly been a breach of the agreed terms, imposing a penalty is likely a futile gesture. Any assets and funds WTL may have are best directed to its existing creditors, including Ms Hoskin.

[14] WTL is also ordered to reimburse Ms Hoskin for the \$70 fee for lodging this matter in the Authority.

Robin Arthur  
Member of the Employment Relations Authority