

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 69/10
5296217

BETWEEN AARON HOWEARTH
 Applicant

AND BOB BAUGHAN
 Respondent

Member of Authority: Philip Cheyne

Representatives: Georgina Burness, Advocate for Applicant
 Bob Baughan, Respondent in person

Phone Conference: 16 March 2010

Determination: 17 March 2010

DETERMINATION OF THE AUTHORITY

[1] After this problem was canvassed back and forth during the phone conference both parties said they were willing to leave me to issue a determination without further investigation.

[2] This is a straight forward matter with an obvious solution.

[3] The parties entered into a record of settlement pursuant to s.149 of the Employment Relations Act 2000. A term required Mr Baughan to make 25 regular payments by direct credit to Mr Howearth's bank account starting on Wednesday 4 November 2009 and weekly thereafter.

[4] Mr Howearth says that there have been at least three payments a week or more late and other payments have been received on Thursdays not Wednesdays. Mrs Baughan who looks after the accounts for the business says that payments are set to go through on a Wednesday available in the payee's account on the Thursday which meets the terms of the record of settlement; and that they are now one payment ahead of schedule. Mrs Baughan acknowledges that there were problems with two payments.

[5] There are difficulties with the statement of problem lodged by Mr Howearth's representative. First, the exact default is not properly specified. Also, there are problems with the remedies claimed. The claim is for:

*Fine imposed from ERA and possible jail term up to 3 months
Payment of \$1500.00 owing plus Hurt and humiliation of 2000.00
Costs of \$2500.00 for legal representation*

[6] The power to fine or imprison is within the Employment Court's jurisdiction in the event of proven non-compliance with a compliance order issued by the Authority under s.137 of the Act: see s.138(6) and s.140(6) of the Act. This is an application to the Authority, not the Court. To cure the informality and to focus on the substance of the problem I will treat it as an application for a compliance order under s.137(a)(iii) of the Act.

[7] There is no power for the Authority to make an award of compensation for hurt and humiliation in the event of non-compliance with a term in a record of settlement made under s.149.

[8] That leaves costs and payment of the residue of the settlement.

[9] It is common ground that only \$600.00 is still to be paid. A term of the settlement says that in the event of any default the balance then due is payable immediately. The question is whether I should by compliance order require the whole sum still owing to be paid now given that Mr Baughan is ahead of the payment schedule. Mr Baughan assures me that he will honour the present banking arrangements for a weekly payment.

[10] In the above circumstances I will adjourn this application for six weeks. If at that time the remainder owing has been paid in full, I will dismiss the application with no order for costs. If there is anything still unpaid I will further consider whether the circumstances call for the imposition of a penalty under s.149(4) of the Act, a compliance order and an assessment of Mr Howearth's costs.

Philip Cheyne
Member of the Employment Relations Authority