

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 20
5324762
5324767

BETWEEN KATJA JACOBS (5324762)

AND SARAH SHANNON(5324767)
 Applicants

AND SANITAS PER AQUA
 LIMITED
 Respondent

Member of Authority: G J Wood

Representatives: Joe Richardson for the Applicants
 Michelle Piercy for the Respondent

Investigation Meeting: 26 January 2011 at Wellington

Submissions Due: 9 February 2011

Determination: 10 February 2011

DETERMINATION OF THE AUTHORITY

[1] The applicants seek compliance with mediated settlements, whereby \$1,500 was due in instalments of \$150 per month to each of them, but no payments have been made. As at the date of the investigation meeting, six payments had been missed, totalling \$900 each. The applicants seek the moneys due under the settlement agreement, together with costs and expenses of the investigation meeting and penalties for breaches of the terms of settlement.

[2] Ms Piercy claims that the respondent, Sanitas Per Aqua Limited (Sanitas), is unable to pay more than \$10 per week to each applicant.

[3] The following factors are relevant about the financial position of Sanitas. First, its principal, Ms Piercy, has been unable to work for extended periods. The Authority was able to speak to Sanitas' accountant, who was preparing the 2009/ 2010

accounts, from which I draw these additional conclusions. Second, the income of Sanitas is so low that it is not required to be registered for GST. Third, as at March 2010, Sanitas had negative equity (which related to loans advanced to Sanitas several years ago by Ms Piercy and/or her family).

[4] Matters were adjourned for two weeks in order to give Ms Piercy time to access Sanitas' bank accounts and its accountants' reports. No information has, however, been received from Sanitas since that date. In Mr Richardson's view, this is further evidence of a deliberate refusal by Sanitas to pay the moneys owing.

[5] This is clearly an appropriate case for the issuing of a compliance order. Payment may be ordered by the Authority by way of instalments, but only if the financial position of the employer requires it. I am satisfied from the limited information from the company's accountant that Sanitas is not in a position to pay all the sums owing within such a time frame that instalments are avoidable. However, Ms Piercy has not helped herself or Sanitas by failing again to provide the detailed information requested of Sanitas.

[6] I therefore order the respondent, Sanitas Per Aqua Limited, to pay the applicants, Katja Jacobs and Sarah Shannon, the sum of \$50 per fortnight each, commencing from 23 February 2011. Given the financial status of Sanitas, and the need to avert continuing non-compliance with the settlement agreement, this order is made in substitution of the terms of the settlement agreement. Thus the payments due of \$150 per month to each applicant from February 2011 and beyond are no longer required to be met. However, should Sanitas Per Aqua Limited fail to meet any of the instalment payments of \$50 per fortnight each then the whole of the outstanding balance of the \$1,500 will be repayable by Sanitas Per Aqua Limited to each of the applicants forthwith.

[7] This is not a case where penalties will assist the parties in resolving the existing employment relationship problems. It would simply delay payments to which the applicants are justly due.

Costs

[8] Costs and expenses are appropriate, however. Without this investigation, the applicants would most likely never be paid. I therefore order the respondent, Sanitas

Per Aqua Limited, to pay each of the applicants the sum of \$71.56 in expenses and \$100 in costs.

[9] I also formally note for the parties' information that failure to pay these moneys in accordance with the compliance order may lead to further action in the Employment Court, whereby the Court has additional powers to fine and/or sequester the property of Sanitas.

G J Wood
Member of the Employment Relations Authority