

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2024] NZERA 345
3271239

BETWEEN	GUY JACOBSON Applicant
AND	EGN LIMITED Second Respondent

Member of Authority:	Andrew Gane
Representatives:	David Fleming, counsel for the Applicant Nicole Ahern, for the Respondent
Investigation Meeting:	On the papers
Submissions and other: material received:	5 April and 3 May 2024 from the Applicant 2 May 2024 from the Respondent
Determination:	12 June 2024

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Guy Jacobson has applied to the Authority under s 137 of the Employment Relations Act 2000 (the Act) for an order requiring EGN Limited (EGN), to comply with the terms of the determination made by the Authority in which awards were made in his favour and the subsequent costs determination.¹ He also seeks an award of interest on the unpaid awards and costs for this application.

¹ *Jacobson v EGN Limited* [2023] NZERA 629 and *Jacobson v EGN Limited* [2023] NZERA 178.

The Authority's investigation

[2] No statement in reply was lodged in the Authority by EGN, however Nicole Ahern, sole director and shareholder of EGN, did participate in a case management conference held on 21 March 2024.

[3] The parties agreed this matter would be determined on the papers without holding an investigation meeting.²

[4] Mr Jacobson lodged an affidavit in support of his application and Mr Jacobson's representative lodged submissions. Ms Ahern lodged an affidavit setting out EGN's financial position.

[5] As permitted by s 174E of the Act, this determination does not record all the evidence and submissions received and fully considered during the Authority's investigation, but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

Issues

[6] The issues for investigation and determination are:

(a) Whether a compliance order should be made against EGN to comply with the determinations?

(b) Should interest be awarded on the outstanding amount?

Discussion

[7] Section 137(1)(b) of the Act empowers the Authority to order a party to comply with any determination made under the Act and provides that it may be enforced by a compliance order.

[8] EGN has failed to comply with the determinations. Ms Ahern on behalf of EGN has stated that EGN is in financial difficulty, and this is why it has been unable to comply with the determinations. Ms Ahern provided documentary evidence on 31 March 2024 confirming that EGN was suffering a significant financial deficit in the last financial year and was in rent arrears.

² Employment Relations Act 2000, s175D.

[9] Mr Jacobson states that because of his dismissal he has suffered financial hardship and seeks the amounts he has been awarded. He notes EGN is still a registered company and seeks compliance orders against EGN.

Compliance order

[10] I find EGN has not complied with the determinations. It is just in the circumstances, for an order to be made requiring EGN to comply with the determinations. Within 14 days of the date of this determination, EGN is ordered to comply with the determinations and pay to Mr Jacobson:

- (a) \$8,000.00 compensatory damages under s 123(1)(c)(i) of the Act.
- (b) \$21,420.00 lost wages under s 123(1)(b) of the Act.
- (c) \$1,713.60 in holiday pay.
- (d) \$9,821.56 costs award.

[11] I note here that imposition of a compliance order is a serious matter. Should EGN fail to comply with the compliance order I have made, Mr Jacobson is entitled to pursue the breach in the Employment Court or the District Court. The Employment Court has powers to impose a fine not exceeding \$40,000, or order property to be sequestered.³ Alternatively, a certificate of determination may be obtained from the Authority and enforcement obtained in the District Court.

Interest

[12] Mr Jacobson has applied for interest on the amount to be paid by EGN. The power of the Authority to award interest is contained in cl 11 of sch 2 of the Act.

[13] I consider it appropriate to order interest from the dates the amounts were due to be paid to Mr Jacobson. I consider that the dates taken should be 28 days from the date of the determinations i.e. 22 November 2023 and 24 April 2024.

[14] EGN is to pay interest at the rate prescribed in the Interest on Money Claims Act 2016, using the Civil Debt Interest Calculator on the outstanding sums due to Mr Jacobson until the amounts owed are paid in full.⁴

³ Employment Relations Act 2000, Section 139 and 140(6).

⁴ <http://www.justice.govt.nz/fines/civil-debt-interest-calculator>.

Summary of orders

[15] Within 14 Days of this determination EGN Limited is ordered to pay Mr Jacobson the following amounts owing under the determinations:⁵

- (a) \$8,000.00 compensatory damages under s 123(1)(c)(i) of the Act;
- (b) \$21,420.00 lost wages under s 123(1)(b) of the Act;
- (c) \$1,713.60 in holiday pay;
- (d) \$9,821.56 costs award ; and
- (e) Interest as set out in paragraph [14] above.

Costs

[16] This matter was determined on the papers and the costs are awarded in respect of this compliance application only.

[17] I order EGN Limited to contribute \$750.00 as a contribution to Mr Jacobson's actual costs in this matter and disbursements of \$71.56.⁶

[18] EGN Limited is ordered to comply as ordered above within 14 days of service of this determination.

Andrew Gane
Member of the Employment Relations Authority

⁵ *Jacobson v EGN Limited* [2023] NZERA 629 and *Jacobson v EGN Limited* [2023] NZERA 178.

⁶ clause 15 of Schedule 2 of the Employment Relations Act.