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James v CBC (2013) Limited (Wellington) [2018] NZERA 2035; [2018] NZERA Wellington 35 (2 May 2018)

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James v CBC (2013) Limited (Wellington) [2018] NZERA 2035 (2 May 2018); [2018] NZERA Wellington 35

Last Updated: 18 May 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2018] NZERA Wellington 35
3024121

BETWEEN TROY JAMES Applicant

AND CBC (2013) LIMITED Respondent

Member of Authority: M B Loftus

Representatives: Kelly Coley, Advocate for Applicant

Craig Bertram, for Respondent

Investigation Meeting: On the papers

Submissions Received: 4 April and 24 April 2018 from Applicant

20 April 2018 from Respondent

Determination: 2 May 2018

DETERMINATION OF THE AUTHORITY

[1] On 14 December 2017 (incorrectly dated 14 December 2016) I issued a consent determination incorporating, as an order of the Authority, various terms agreed between the parties in order to resolve their differences. It was concluded during an investigation meeting held that day.¹

[2] The order required the Respondent, CBC (2013) Ltd (CBC), make three payments. They were:

a. \$2,000 to Mr James no later than 24 December 2017;

b. a contribution of \$1500 plus GST toward Mr James' costs to be paid in three instalments with the first being made no later than 31

December 2017. This was provided an invoice was proffered which it was; and

c. reimbursement to Mr James of his filing fee in the Authority.

[3] None of the payments have been made and all are now overdue. Mr James therefore seeks an order CBC comply with the determination; that it pay interest; that it incur a penalty; that it pay the cost of this application and reimburse the additional filing fee. Mr James asks the penalty be payable to him as opposed to the Crown.

[4] CBC did not respond to the application within the time required by the regulations.³ Nor did it participate in a telephone conference held to discuss the claims management and during which a decision was made to address the application on the papers. That said it is clearly aware of both the claim and the outcome of the telephone conference as it did furnish a belated statement in reply which effectively constituted the required submission.

[5] The response essentially reiterates the factual background upon which CBC mounted its defence to the original substantive claim of unjustified dismissal and asserts that in the circumstances Mr James was been fairly treated by virtue of payments already received, namely his wages.

[6] CBC goes on to advise it has ceased trading given it is no longer interested in the risks generated by having to employ staff from a labour pool that comprises *...lazy useless unreliable thieving drug taking dumb dangerous* people.⁴ The submission contains other negative observations about the environment in which employment takes place and the system through which its rules are enforced.

[7] Mr James evidence satisfies me the amounts required by the consent determination have not been paid. Indeed that fact is not contested and CBC's reply all but confirms the assertion. The simple fact is those monies are payable and remain so. CBC's submissions do nothing to change that fact.

[8] Indeed I would go further and remind CBC that the arrangement was entered into by its representative after the hearing of evidence. It was also entered into after an oral indication of the outcome; namely that Mr James would succeed with his application. Reasons were given and they largely relied upon evidential admissions made by CBC. Notwithstanding that Mr James chose to settle for an amount which, given the requirements of s 123(1)(b) of the Act, was considerably less than the minimum I could have contemplated ordering had I been required to do so. When it comes to fairness I must observe CBC was extremely well treated in the circumstances yet it has chosen to ignore the proverbial gift horse.

[9] As to the assertion CBC has ceased trading I can only observe it remains a registered company.

[10] Turning to the claim for interest. Interest is to reimburse someone for use, by others, of money that is theirs. There can be no doubt CBC has, by failing to make a payment it agreed to, continued to have use of money rightfully belonging to Mr James. This is, I conclude, a circumstance in which interest should be payable, especially in the absence of a contrary argument. According to the interest rate calculator established pursuant to [s 13](#) of the [Interest on Money Claims Act 2016](#) the amount payable is \$43.25.

[11] There is then the application for a penalty. That one can be ordered is confirmed by s 137(1)(b) of the Act. The simple fact is CBC's submission confirms the decision not to pay was wilfully taken. Having considered the law on penalties and previous precedents I conclude this is the sort of flagrant breach that warrants the imposition of a penalty.

[12] Again having considered the circumstances, precedent and the law regarding quantification⁵ I conclude the single breach that has occurred here warrants a penalty of \$2,000.

[13] I also conclude it should be payable to Mr James. Once a party enters into a settlement agreement that it asks be confirmed by the Authority it is bound to comply and Mr James should not be forced to resort to an application such as this. In addition I consider there has been further harm given CBC's submission contains derogatory observations about Mr James and the rejection of what I can only portray as Mr

James' generosity.⁶ For that he warrants further recompense.

⁵ *Jeanie May Borsboom (Labour Inspector) v Preet PVT Limited and Warrington Discount Tobacco*

Limited [\[2016\] NZEmpC 143](#)

⁶ Refer paragraph [8] above

[14] Costs are reserved if only because the claim was not quantified and CBC has not therefore had a chance to fully respond.

Conclusion and Orders

[15] For the above reasons I conclude I should make the orders Mr James seeks. [16] I therefore order the respondent, CBC (2013) Limited, comply with the

Authority's determination of 14 December 2017⁷ and pay the applicant, Troy James,

\$3,796.56 (three thousand, seven hundred and ninety six dollars and fifty six cents)

being the outstanding amounts ordered therein.

[17] In addition I order CBC (2013) Limited also pay Mr James:

a. \$43.25 (forty three dollars and twenty five cents) being interest owing as of the date of this determination; and

b. \$2,000 (Two thousand dollars) being a penalty which I have concluded should be payable to Mr James as opposed to the Crown.

[18] The above payments are required to me made no later than 4.00pm on

Wednesday 23 May 2018.

[19] In closing I caution the respondent and its director, Craig Bertram, that failure to comply with the above orders may result in further consequences. Should such a failure be pursued in the Employment Court⁸ they potentially include the imposition of fines, the sequestration of property and/or imprisonment. Conversely a certificate of determination may be obtained and the matter pursued in the District Court.⁹

[20] Costs are reserved.

M B Loftus

Member of the Employment Relations Authority

⁷ Above n 1

⁸ [Sections 139](#) and [140](#) of the [Employment Relations Act 2000](#)

⁹ *Denyer v Peter Reynolds Mechanical Ltd t/a The Italian Job Service Centre* [2015] NZEmpC41 at

[42] and *Broeks v Ross EmpC Auckland AC36A/09*, 11 November 2009 at [5]