

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 182/08  
5121858

BETWEEN                      PAUL JANOVEC AND JANA  
   BERANKOVA  
   Applicants

AND                              COWES BAY ESTATE  
   LIMITED  
   Respondent

Member of Authority:      Robin Arthur

Representatives:           Paul Janovec for Applicants  
   Sean Donnelly for Respondent

Investigation:              By telephone conference and on the papers

Determination:              19 May 2008

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**DETERMINATION OF THE AUTHORITY**

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- A.      Under s137 and s138 of the Employment Relations Act 2000 (“the Act”) the Respondent is ordered to comply by no later than 27 May 2008 with the terms of determination AA107/08 (25 March 2008) by paying to the Applicants the full sums awarded to them.**
- B.      The Respondent is also to reimburse the Applicants for the \$70 fee for lodging their application for a compliance order.**

**Employment Relationship Problem**

[1]      Under determination AA107/08 the Respondent was ordered to pay to the each of the Applicants by no later than 8 April 2008 the sum of \$3486.38 in wages, holiday pay and interest. If the sum due was not paid by 8 April, additional interest was to

accrue on the wages and holiday pay owed (but not the interest already awarded) at the rate of 98 cents a day until the amounts owing were paid in full.

[2] The Respondent was also ordered to reimburse the Applicants fee of \$70 for lodging their claim in the Authority.

[3] By statement of problem lodged on 17 April 2008 the Applicants sought an order for compliance because the money due had not been paid.

[4] By statement in reply lodged on 1 May 2008 the Respondent advised that it had made available for collection from its accountants' offices in Auckland cheques for some of the money due but not all of it. The Respondent said it was "*challenging the determination*".

[5] By email to an Authority Support Officer dated 28 April 2008 Mr Donnelly, a director of the Respondent company, advised that he had "*arranged for our accountant to lodge the challenge*".

[6] During a telephone conference with the representatives on 16 May 2008 I was told by Mr Janovec that the sums due remained unpaid and by Mr Donnelly that he assumed a challenge to determination AA 107/08 had been filed in the Employment Court.

[7] Shortly before the telephone conference I had the Support Officer check with the Auckland Registry of the Employment Court and was told that the Court had no record of any challenge or application for stay of Authority determination AA 107/08.

[8] The effect of a determination of the Authority – including, as in this case, a requirement for one party to pay another party certain sums of money – is not stayed or 'put on hold' by one party filing a challenge to that determination: s180 of the Act. The Respondent, even if challenging the determination, must pay the money due unless the Court or the Authority orders a stay.

[9] On the information available to me, no stay of determination AA 107/08 has been sought or granted in either the Employment Court or the Authority.

**Orders**

[10] I advised the representatives that there appeared to be no reason that a compliance order should not be issued and that I anticipated issuing a determination ordering compliance with determination AA 107/08 before the close of business on Monday, 19 May 2008. A further check with the Auckland Registry of the Court late this afternoon confirmed that no challenge or application for stay had been filed there.

[11] I now make the orders A and B set out at the head of this determination.

[12] I note for the information of the parties that should the Respondent fail to comply with these orders the Applicants may apply to the Employment Court for further orders against the Respondent that may include a fine of up to \$40,000, sequestration of its property and imprisonment for a term up to 3 months: s138(6) and s140(6) of the Act.

Robin Arthur  
Member of the Employment Relations Authority