

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 11
5400965

BETWEEN HUSSEIN JOUMAA
 Applicant

AND PITA DOCTORS LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
 Haytham Akin Director of Respondent

Investigation Meeting: 09 January 2013 in Auckland

Determination: 10 January 2013

DETERMINATION OF THE AUTHORITY

- A Pita Doctors Limited breached the Record of Settlement with Mr Joumaa entered into under s.149 of the Employment Relations Act 2000 (the Act).**
- B A penalty of \$300 is imposed on Pita Doctors for this breach. Pita Doctors is ordered to pay this penalty directly to Mr Joumaa within 30 days of the date of this determination.**
- C Pita Doctors is ordered, within 30 days of the date of this determination, to reimburse Mr Joumaa \$71.56 his filing fee.**

Employment Relationship Problem

[1] Mr Hussein Joumaa and Pita Doctors Limited (Pita Doctors) entered into a Record of Settlement (RoS) dated 16 October 2012 under s.149 of the Act. The RoS was signed by a mediator from the Ministry of Business, Innovation and Employment.

[2] Clause 2 of the RoS required Pita Doctors to pay Mr Joumaa specified amounts on or before 26 October 2012. Pita Doctors paid Mr Joumaa just under a

quarter of the money owed on 26 October and then it paid the balance by nine weekly instalments of \$550 with the last payment being made on 19 December 2012.

[3] Pita Doctors advised Mr Joumaa (via his then representative) it was unable to pay all of the money it owed by the due date because of a sudden and unexpected drop in business, the unexpected departure of three staff who had to be paid out their annual holiday pay upon termination, and the subsequent discovery of unpaid liabilities (which it says Mr Joumaa was supposed to have paid) to its power provider and to the Inland Revenue Department.

[4] Pita Doctors says after entering the RoS it suffered a financial crisis and was unable to pay its rent arrears. Its landlord has referred the matter to debt collectors who are actively taking steps to recover \$13,128.50 rent arrears. Pita Doctors says it also owes its suppliers, some of whom will no longer do business with it, around \$35,000.

[5] Pita Doctors is a privately owned small takeaway business situated in the 277 shopping centre. It has three fulltime staff and five casual staff and it operates from 9am until 6pm seven days a week. Pita Doctors says it had \$266 in its account (confirmed by bank statement) on the day the money was due to be paid to Mr Joumaa. Pita Doctors says despite attempts to obtain a loan it was unable to pay the full amount and proposed a payment schedule of nine payments to clear the amount due by 19 December 2012.

[6] The first payment to Mr Joumaa on 26 October 2012 was financed by the Pita Doctors former director borrowing money from a friend as a personal loan. The same former director also made a personal credit card payment (which resulted in him exceeding his credit limit) of \$2,200 to Pita Doctors to provide it with money to pay to Mr Joumaa.

[7] Mr Joumaa says he was serious inconvenienced and distressed by Pita Doctors' breach of the RoS. He says he and his partner suffered significant stress. He was unable to move into new rental accommodation he had found because he had relied on the settlement funds to make the deposit.

[8] Mr Joumaa also had to break his promise to his family to send money back to Lebanon to assist his sick father with his medical costs. Mr Joumaa was late in paying off his rent arrears which caused him worry his landlord would not give him a favourable credit reference when Mr Joumaa attempted to move to new accommodation. The landlord subsequently evicted him from his rental accommodation.

[9] Mr Joumaa seeks that a penalty of \$20,000 be imposed on Pita Doctors, with the penalty to be paid to him personally and not the Crown. He also seeks indemnity costs.

[10] Pita Doctors admits breaching the RoS but says a penalty should not be imposed on it because it did everything it could to meet its obligations under the RoS as soon as it could.

Should a penalty be imposed on Pita Doctors for its breach of the RoS?

[11] It is a serious matter for a party who has entered into obligations under a RoS to fail to comply with its obligations. I consider a penalty is appropriate to punish Pita Doctors for its breach. However the extenuating financial circumstances it faced subsequent to entering into the RoS and the steps it took to meet its obligations in as timely manner as possible will result in a minimal penalty only being imposed.

[12] A penalty of \$300 is imposed on Pita Doctors for its breach of the RoS.

Should any of the penalty be paid to Mr Joumaa?

[13] I am satisfied Mr Joumaa suffered as a result of Pita Doctor's breach of the RoS. It is therefore appropriate to recognise that by awarding him the entire penalty that has been imposed on Pita Doctors. I order Pita Doctors to pay the penalty to Mr Joumaa directly within 30 days of the date of this determination.

Should indemnity costs be awarded?

[14] This is not an appropriate case for indemnity costs to be awarded.

[15] Mr Joumaa was not represented at the investigation meeting but he did engage an advocate to file his Statement of Problem. Mr Joumaa produced an invoice dated 24 December 2012 from his former advocate which showed he has incurred costs of \$1,931. When the Authority made inquiries with Mr Joumaa's former advocate it was told that the invoice produced to the Authority related to pre RoS breach matters.

[16] Mr Joumaa told the Authority his former advocate had provided the invoice when Mr Joumaa severed their relationship. The reasonable inference from that is that Mr Joumaa has not been charged for work regarding the breach of RoS claim. There was also no evidence to establish he would be charged any additional costs.

[17] An award of costs may only be made if a party has actually incurred costs. There was no evidence that Mr Joumaa had actually incurred any costs in respect of the breach of RoS claim. I therefore decline to award him costs.

[18] Pita Doctors is ordered, within 30 days of the date of this determination, to reimburse Mr Joumaa \$71.56 for his filing fee.

Rachel Larmer
Member of the Employment Relations Authority