

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
OFFICE**

BETWEEN Rangi Karaitiana
AND Brett Neil Emerson
REPRESENTATIVES G Miles For Applicant
No appearance by or for Respondent

MEMBER OF AUTHORITY Gregory Wood

INVESTIGATION Napier
MEETING 9/11/2006
DATE OF 10/11/2006
DETERMINATION

DETERMINATION OF THE AUTHORITY

1. I am satisfied that service was effected on the Respondent, Brett Emerson, as he signed as the recipient of the notice of the investigation meeting. Nevertheless, he did not attend the investigation meeting. This is consistent with his failure to respond in any way to this application, as my earlier direction states.
2. I am satisfied accordingly that no good cause for Mr Emerson to fail to attend or be represented has been shown. I therefore have proceeded as fully in this matter as if he had attended or represented.
3. After an employment relationship problem had been raised by Mr Karaitiana the parties attended mediation and reached a mediated settlement under s.149 of the Act. The agreement provided amongst other things that:

...
“The respondent will pay the applicant...the compensatory sum of \$500 in terms of the provisions of s.123(c) (i) of the Employment Relations Act 2000.

...
The respondent will pay all outstanding wages, holiday pay and any other statutory and contractual entitlements including 40c per kilometre allowance due to the applicant...

The applicant and the respondent agree that if any term of this agreement is breached the breaching party will be liable to pay the other \$1500 in way of liquidated damages for each and every breach.”

4. Mr Karaitiana gave evidence, which I accept, that he has received no monies under this settlement agreement, despite a number of efforts by his representative.
5. Mr Karaitiana therefore claims, and I accept, that he is owed \$500 as a compensatory sum, \$481.90 gross in statutory and contractual entitlements and \$3000 in liquidated damages for two breaches of the settlement agreement. The latter sum is because Mr Emerson breached two of the clauses in the settlement agreement and he agreed to pay \$1500 damages in respect of each breach.
6. I therefore order the respondent, Brett Emerson, to comply with the mediated record of settlement and to therefore pay to the applicant, Rangi Karaitiana, the following sums, within fourteen days of the date hereof:
 - \$3000 in liquidated damages;
 - \$500 as a compensatory sum; and
 - \$481.90 gross in statutory and contractual entitlements.
7. I also inform Brett Emerson that failure to comply with the above compliance order will allow the Employment Court to consider fining or imprisoning him or sequestering his property.
8. Costs are reserved.

G J Wood
Member of Employment Relations Authority