

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 164
3317890

BETWEEN HARPREET KAUR
 Applicant

A N D CAISTEAL AN IME LIMITED
 Respondent

Member of Authority: David G Beck

Representatives: Applicant in person
 Darren Angus for the Respondent

Investigation Meeting: On the papers

Submissions Received: 4 February 2025 from the Applicant
 7 February 2025 from the Respondent

Date of Determination: 18 March 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In a determination of 4 July 2024, the Authority ordered compensatory sums in Harpreet Kaur’s favour to be paid by Caisteal An Ime Limited (Caisteal), including a payment of \$3,000 pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act). This payment was specifically identified as being to compensate Ms Kaur for the unnecessary

distress and humiliation caused by Caisteal's approach to the payment of minimum entitlements when her employment ended in August 2023. ¹

[2] Caisteal has met the payments of the Authority order but in doing so has deducted income tax from the aforementioned \$3,000. Ms Kaur has made an application to the Authority to have the aforementioned award paid to her without deductions and has asked the Authority to consider granting her additional compensation for the frustration and distress she has experienced in dealing with Caisteal's sole director, Darren Angus, on this issue.

[3] In contrast Caisteal's Mr Angus argues that this is not a matter for the Authority to resolve and is one between Ms Kaur and the Inland Revenue department.

[4] I directed the parties to mediation on 30 September 2024 that occurred on 19 November but the matter remains unresolved.

[5] After a directions teleconference on 24 January 2025, I resolved to deal with the matter under s 160(3) of the Act that provides:

The Authority is not bound to treat a matter of the type described by the parties, and may, in investigating the matter, concentrate on resolving the employment relationship problem, however described. ²

[6] I called for submissions from both parties who agreed to let the Authority deal with the issue 'on the papers'

The Authority Investigation

[7] I have received submissions and pursuant to s 174E of the Employment Relations Act 2000 I make findings of fact and law and outline conclusions on matters to resolve the disputed issue and make orders but I do not record all evidence and submissions received.

[8] The issues to be decided are:

- i. Do s 123(1)(c)(i) Act payments attract income tax or are they paid without deductions?

¹ *Harpreet Kaur v Caisteal An Ime Limited* [2024] NZERA 393.

² Employment Relations Act 2000, s 160(3).

- ii. If the answer to the above is the latter, can the Authority award further compensation to Ms Kaur for the distress involved in enforcing the matter?
- iii. How should costs be dealt with.

Ms Kaur's submission

[9] Ms Kaur who represented herself, made the general point that litigation between the parties was prolonged (17 Months), she was only seeking to enforce minimum entitlements and she considered Caistéal's Mr Angus was obstructive and had express knowledge of having to deal with s 123(1)(c)(i) compensatory payments on the basis they be paid without deductions.

[10] Ms Kaur expressed a concern that without being penalised Mr Angus would repeat minimum entitlement breaches with other workers.

Mr Angus' submission

[11] It is Mr Angus' view that he has met all the orders made in the Authority determination of 4 July 2024 and that any issues Ms Kaur has regarding taxation should be addressed with the Inland Revenue Department and that the Authority has no jurisdiction to resolve the disputed issue. In support of the latter proposition Mr Angus suggests Inland Revenue guidance prevails in the form of their current Public Ruling BR Pub 06/05 dated 30 June 2006 (IRD ruling).³ Mr Angus suggests the onus of proof regarding how a payment should be assessed rests with the taxpayer and Inland Revenue.

[12] Further Mr Angus opines s 161 of the Act does not grant the Authority any jurisdiction on matters relating to taxation.

Assessment

[13] In dealing with the issue of Mr Angus' past dealings on this subject, I note that when the same matter came before the Authority (*Mary-Louise Faithfull v Caistéal An Ime Limited*) the Authority member did initially make a mistake in categorising the ordered s 123(1)(c)(i)

³ Public Ruling – BR Pub 06/05, www.ird.govt.nz/technical-tax/public-rulings.

compensatory payment as being a “gross” payment. Caisteal then challenged the determination but prior to the matter being heard by the Employment Court, the Authority member issued an erratum on 31 May 2022 to the parties, clarifying that the payment be made “without deduction”.⁴ Mr Angus did not dispute this and it is understood the payment was made to Ms Faithfull without deductions with the Employment Court noting that the issue had been raised before them but resolved.⁵

[14] The IRD ruling provided by Mr Angus is also clear that s 123(1)(c)(i) payments do not form income for the purpose of the Income Tax Act 2004 so there is “consequently no liability under section NC 2 for employers or former employers to deduct PAYE from these payments”.⁶

[15] I do note that the IRD Ruling is directed to “Arrangements” made under s 123(1)(c)(i) of the Act and it notes it does not apply to arrangements that;

... are in reality for lost wages or other income but which are merely characterised by the parties as being for humiliation, loss of dignity, or injury to feelings (irrespective of whether such an agreement is signed by a mediator under the Employment Relations Act).

[16] Whereas the payment ordered in the current circumstances was not an ‘arrangement’ that could be the subject of any ambiguity – it was an order issued in an Authority determination.⁷

[17] In turning to Mr Angus’ contention that the Authority has no jurisdiction to determine any matter arising from its own determination, I do not consider that is a viable contention as s 137(2) of the Act provides that the Authority may issue a compliance order to prevent non-observance of an issued determination.⁸

⁴ *Mary-Louise Faithfull v Caisteal An Ime Limited* [2021] NZERA 446.

⁵ *Caisteal An Ime Ltd v Faithful* [2022] ERNZ 1047 at [6] and fn 3.

⁶ Above n 3 at p2.

⁷ Above n1.

⁸ Employment Relations Act 2000, s 137(2).

Finding

[18] I find that it is appropriate that I order Caistéal pursuant to s 137(2) of the Act to ensure the payment of income tax on Ms Kaur's award of \$3,000 compensation be reversed to bring them into compliance with the determination at issue.⁹ Ms Kaur claimed the tax that was deducted and is owing to her amounted to \$1,088.66. However, the statement provided by Caistéal shows that the latter amount was the tax deduction for an amount of \$4,271 as it including additional payments for alternative holidays and a reversed overpayment. Using the same tax calculation on the \$3,000 compensatory payment leaves a tax figure of \$764.40 owed to Mr Kaur.

[19] I decline to award a penalty against Caistéal as this is an application to rectify non-compliance with an Authority determination and no penalty provision prevails in the Act but the respondent has to be aware that a failure to comply with the Authority order above will allow the applicant to apply to the Employment Court for that court to exercise its discretionary powers under s 140(6)(c)-(e) of the Act that include that the person in default be sentenced to imprisonment for a term not exceeding 3 months, be fined an amount not exceeding \$40,000 and order that property of the person in default be sequestered.

Orders

[20] To comply with the determination s 123(1)(c)(i) order in [2024] NZERA 393, I have found that Caistéal An Ime Limited must pursuant to s 137(3) of the Employment Relations Act 2000, within 14 days of this determination being issued, pay Harpreet Kaur the sums of:

- i. \$764.40 without deduction.
- ii. The Authority filing fee of \$71.55.

⁹ Above n1.

Costs

[21] Costs are not at issue as the applicant was self-represented but I have as above directed Caisteal An Ime Limited to pay Harpreet Kaur the Authority filing fee of \$71.55.

David G Beck
Member of the Employment Relations Authority