

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2025] NZERA 156
3312140

BETWEEN RUNGWANWILAI KONGBANG
Applicant

AND LOTUS TOUCH LIMITED
Respondent

Member of Authority: Andrew Gane

Representatives: David Fleming, counsel for the Applicant
Craig Johnson for the Respondents

Investigation meeting On the papers

Submissions and information received: 28 January 2025 from the Applicant
No submissions from the Respondent

Date: 14 March 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] By application lodged on 23 July 2024 Rungwanwilai Kongbang seeks orders for compliance with the determination of the Authority of 6 December 2023 (the determination) in which Lotus Touch Limited (LTL) was ordered to pay sums to the applicant.¹

[2] LTL has lodged a statement in reply and states it is unable to pay the amounts ordered by the Authority. LTL has lodged a claim against Ms Kongbang in the Authority that she has breached her employment obligations to LTL. It seeks delay of the compliance proceedings until it's claim against Ms Kongbang has been determined.

¹ *Kongbang v Lotus Touch Limited & Anor* [2023] NZERA 727.

The Authority's Investigation

[3] Following a case management conference held on 18 December 2024 it was agreed to avoid unnecessary costs and time, the matter would be investigated on the papers. Ms Kongbang lodged an affidavit, supporting documents and submissions in support of her position.

[4] Although LTL lodged a statement in reply and was represented at the case management conference, it did not participate further in proceedings.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination does not record all the evidence and submissions received and fully considered during the Authority's investigation, but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

Issues

[6] The issues for investigation and determination are:

- (a) Did the LTL breach the Authority determination requiring it to pay sums to the applicant?
- (b) If so, should compliance orders be issued against LTL including, consideration of any applications that payment should be made by instalments?
- (c) Should the applicant be ordered to pay interest on any amount outstanding under the determination?
- (d) Should the applicant be awarded a further sum of \$1,000 in costs on this application?
- (e) Should LTL be required to reimburse the applicant for the filing fee of \$71.55?

A compliance order is appropriate

[7] On 6 December 2023, the Authority issued a substantive determination upholding Ms Kongbang's various claims and ordering LTL to pay to her:

- (a) Reimbursement of lost wages of \$39,117.24;
- (b) Holiday pay of \$3,129.40;
- (c) and Public holiday pay of \$1,698; and

(d) Interest on these amounts, from when her employment ended on 31 October 2020, until when the money was paid.

[8] A compliance order may be made under s 137(1)(b) of the Act when any person has not observed or complied with any determination of the Authority.

[9] The power to grant compliance orders is discretionary. When discussing the equivalent provision under the Employment Contracts Act 1993, a full court of the Employment Court found that this “is not an absolute discretion but one that is conditioned by the need to do justice.”²

[10] The LTL has not brought an Employment Court challenge to the Authority’s substantive determination. There is no reason for the matter to be postponed.

[11] Although LTL has stated it does not have the funds to pay it remains a currently registered company, and is not in administration or liquidation.

[12] Ms Kongbang submitted the payments ordered by the Authority have been outstanding for over a year and LTL has said it is unable to pay.

[13] I am satisfied that LTL has not complied with the terms of the determination and it is just in the circumstances to exercise my discretion under s 137(1)(b) of the Act for an order to be made requiring LTL to comply with the Authority’s determination.

[14] The interest awarded in the determination will continue to accumulate until the amount ordered is paid in full.

Costs

[15] Ms Kongbang seeks a contribution of \$1,000 towards the costs of representation she has incurred. The Authority has discretion to award costs, may order any party to pay costs and expenses as it thinks reasonable, and may apportion such costs and expenses between the parties as it thinks fit.

[16] I consider a costs award in the amount of \$1,000 is appropriate.

² *United Food and Chemical Workers Union of NZ v Talley* [1992] 1 ERNZ 756.

Summary of orders

[17] Lotus Touch Limited is ordered to pay the following amounts to Rungwanwilai Kongbang within 28 days of the date of this determination:

- (a) Reimbursement of lost wages of \$39,117.24;
- (b) Holiday pay \$3,129.40;
- (c) Public holidays pay of \$1,698.00;
- (d) Interest on these amounts, from when her employment ended on 31 October 2020, until when the money was paid, calculated in accordance with the Interest on Money Claims Act 2016;³
- (e) Costs of \$1,000.00; and
- (f) Disbursements of \$71.55 for the lodgement fee.

Andrew Gane
Member of the Employment Relations Authority

³ <http://www.justice.govt.nz/fines/civil-debt-interest-calculator>