

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2017] NZERA Wellington 117
3020401

BETWEEN TONY KRAUSKOPF
Applicant
AND GROUNDUP CAFÉ
LIMITED
Respondent

Member of Authority: M B Loftus
Representatives: Bede Laracy, Advocate for Applicant
No appearance for Respondent
Investigation Meeting: 27 November 2017 at Wellington
Submissions Received: At the investigation meeting
Determination: 27 November 2017

**ORAL DETERMINATION OF
THE EMPLOYMENT RELATIONS AUTHORITY**

[1] The applicant, Tony Krauskopf, seeks an order the respondent, Groundup Café Limited (Groundup), comply with the provisions of a section 149 agreement the parties concluded at mediation on 12 September 2017. He asks a penalty be imposed for the alleged non-compliance and also seeks interest and costs.

[2] Groundup's position is unknown as it neither provided a statement in reply nor attended the investigation meeting. Its absence does, however, raise the question of whether or not I should proceed.

[3] The answer is yes. All companies are required to have an address for service.¹ Groundup's is the offices of Deans & Associates (Kapiti) Limited, 18 Ihakara Street, Paraparaumu. The evidence satisfies me the Notice of Investigation Meeting was served at that address at 11.32am on 13 November 2017.

¹ Section 192(1) of the Companies Act 1993

[4] The notice of meeting includes advice that should the respondent fail to attend the Authority may proceed and issue a determination in favour of the applicant.² I am therefore satisfied Groundup is, or at least should be, aware of the consequences of non-attendance. Given the absence of either notice of or an explanation for its absence I consider it appropriate to continue.

[5] As already said, and as a result of Mr Krauskopf having lodged a personal grievance, the parties attended mediation on 12 September 2017. The process ended with a Record of Settlement signed by the mediator pursuant to s 149 of the Employment Relations Act 2000 (the Act).

[6] Amidst other things the settlement required Groundup pay Mr Krauskopf \$5,500 as compensation pursuant to s 123(1)(c)(i) of the Act.

[7] Mr Krauskopf says Groundup has failed to make the payment and its sole Director and Shareholder, Darryl Ellis, has expressly stated he has no intention of doing so. Having had an opportunity to question Mr Krauskopf I accept those assertions. It follows I accept Groundup has failed to comply with its obligations and an order it do so will follow.³

[8] Mr Krauskopf also asks Groundup be penalised for its failure to comply with its obligations under the settlement. That this may occur is confirmed by section 149(4) of the Act. Having heard Mr Krauskopf and Mr Laracy and in the absence of any contrary argument or evidence I conclude this is a flagrant breach which warrants the imposition of a penalty. There has been no attempt by Groundup to address the issue or respond to approaches from either Mr Krauskopf or the Authority.

[9] Having considered the principles which guide the imposition of a penalty⁴ I conclude \$2,500 to be appropriate.

[10] Mr Krauskopf also seeks interest. Interest is to reimburse someone for use, by others, of money that is theirs. There can be no doubt Groundup has, by failing to make the payment it agreed to, continued to have use of money rightfully belonging to Mr Krauskopf. This is, I conclude, a circumstance in which interest should be payable, especially in the absence of a contrary argument.

² Note 2 to Form 8 of the Employment Relations Authority Regulations 2000

³ Section 137(1)(a)(iii) of the Employment Relations Act 2000

[11] The current rate is 5%.⁵ The money was payable no later than 19 September 2017. As of the date of this determination the interest payable is \$51.99 and that will increase by 14 cents a day till payment is made.

[12] Finally there is an application for costs with Mr Krauskopf asking they be reimbursed on an indemnity basis. His costs total \$1,407.56 which includes the filing fee. They also include significant disbursements such as the cost of travel from where Mr Krauskopf has now shifted.

[13] An award of indemnity costs is unusual, However having considered the principles applying to costs⁶ and particularly those relating to actions which cause the other party to incur unreasonable and unnecessary costs such as paragraphs [27](c), [29](b) and [29](d) of *Bradbury* I conclude this is a situation in which such an order should be made.

[14] Once a party enters into a settlement agreement it is bound to comply and Mr Krauskopf should not be forced to resort to an application such as this. Furthermore, and by failing to respond or otherwise comply with statutory requirements in respect to a response to this application, Groundup has ensured Mr Krauskopf has no option but to incur these unnecessary costs which include the travel. He had to be present to evidence his claims had Groundup attended and denied the breach.

Conclusion and Orders

[15] For the above reasons I order the respondent, Groundup Café Limited:

- a. Comply with the terms of the s 149 settlement it entered into on 12 September 2017 and pay Mr Krauskopf the sum of \$5,500 (five thousand, five hundred dollars) as compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000; and
- b. Pay a penalty to the Crown of \$2,500 (two thousand, five hundred dollars). Payment is to be made to the Crown via the Authority; and

⁴ *Borsboom (Labour Inspector) v Preet PVT Ltd and Warrington Discount Tobacco Ltd* [2016] NZEmpC 143

⁵ Judicature (Prescribed Rate of Interest) Order 2011 (2011/177)

⁶ *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135 and *Bradbury v Westpac Banking Corporation* [2009] 3 NZLR 400

- c. Pay Mr Krauskopf a further \$51.99 (fifty one dollars and ninety nine cents) being interest owing as of the date of this determination. This will increase by \$0.14 (fourteen cents) with each calendar day that passes between 27 November 2017 and the date of payment; and
- d. Pay Mr Krauskopf a further \$1,407.56 (one thousand, four hundred and seven dollars and fifty six cents) as reimbursement of the costs incurred in making this application.

[16] Groundup is to comply with the orders in paragraph [15] no later than 4.00pm on Monday 18 December 2017.

[17] In closing I caution the respondent and its director, Mr Ellis, that failure to comply with the above orders may result in further consequences. Should such a failure be pursued in the Employment Court⁷ they potentially include the imposition of fines, the sequestration of property and/or imprisonment. Conversely, and perhaps more effectively, a certificate of determination may be sourced from the Authority and the matter pursued in the District Court.⁸

M B Loftus
Member of the Employment Relations Authority

⁷ Sections 139 and 140 of the Employment Relations Act 2000

⁸ *Denyer v Peter Reynolds Mechanical Ltd t/a The Italian Job Service Centre* [2015] NZEmpC41 at [42] and *Broeks v Ross EmpC Auckland AC36A/09*, 11 November 2009 at [5]