

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 178
5617000

BETWEEN A LABOUR INSPECTOR OF
 THE MINISTRY OF BUSINESS,
 INNOVATION AND
 EMPLOYMENT
 Applicant

A N D BAY ENTERPRISES LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: Erin Spence for the Applicant
 Satnam Singh for the Respondent

Investigation Meeting: On the papers

Date of Determination: 8 June 2016

DETERMINATION OF THE AUTHORITY

- A. Bay Enterprises Limited is ordered to comply with the Record of Settlement dated 21 September 2015 and pay the sum of \$2,000 to the Labour Inspector within seven (7) days of the date of this determination.**
- B. Bay Enterprises Limited is ordered to pay a penalty of \$500 into the Authority within seven (7) days of the date of this determination.**
- C. Bay Enterprises Limited is ordered to reimburse the Labour Inspector the filing fee of \$71.56 within seven (7) days of the date of this determination.**

Employment relationship problem

[1] A Labour Inspector employed by the Ministry of Business, Innovation and Employment (Labour Inspector) seeks an order for compliance in relation to payments due under a Record of Settlement (the Settlement) made in mediation with Bay Enterprises Limited (BEL).

[2] BEL does not dispute that money is payable under the Record of Settlement entered into.

[3] The parties consented to this matter being determined on the papers based on the information lodged in the Authority.

The issues

[4] The issues requiring determination are whether a compliance order should be made and whether penalties should be imposed on BEL.

Application for compliance

[5] On 21 September 2015 the Labour Inspector and BEL reached an agreed resolution to matters raised by the Labour Inspector and which was recorded in the Settlement and signed by a Ministry of Business Innovation and Employment mediator pursuant to s.149 of the Employment Relations Act 2000 (the Act).

[6] The Settlement required BEL to pay to the Crown by 23 November 2015 the sum of \$2,000. This sum has not been paid by BEL which says it is no longer trading.

[7] I am satisfied the parties have entered into a final binding and enforceable settlement under section 149 of the Act. The Labour Inspector has applied under section 137(2) of the Act for the Authority to order BEL to comply with all of its obligations under the Settlement.

[8] BEL has pleaded it is in no position to pay the amount required under the Settlement. BEL has provided evidence that it is unable to pay its obligations to a banking institution as proof that it is unable to pay the Settlement amount. BEL continues to be a registered company and while I accept it is no longer trading it still has legal obligations.

[9] I am satisfied that BEL entered into the Settlement voluntarily in the full knowledge of its obligations to pay to the Crown the sum of \$2,000. In consideration

of that the Labour Inspector settled all matters between it and BLE. Despite knowing of its responsibilities BEL has taken no steps to meet its obligations.

[10] I consider this an appropriate matter in which to exercise the Authority's discretion to order compliance and the application is granted. Bay Enterprises Limited is ordered to pay to the Labour Inspector the agreed settlement sum of \$2,000 within seven (7) days of the date of this determination.

Further non-compliance

[11] The Authority's orders may be the subject of a further application for compliance in the Employment Court which is empowered to impose penalties for continuing non-compliance which include imprisonment, fines and the sequestration of property.

Penalties

[12] The Labour Inspector seeks the imposition of penalties against BEL for its breach of the Settlement pursuant to section 149(4) of the Act. The maximum penalty the Authority can impose on a company is \$20,000.¹ The imposition of a penalty under section 149(4) of the Act is at the discretion of the Authority.

[13] It is generally accepted that a penalty should be imposed for the purpose of punishment and deterrence. BEL entered into an agreement to pay the Crown \$2,000. Despite a number of communications from the Labour Inspector BEL failed to meet its obligations.

[14] It is clear that the company is no longer trading and is having difficulty in meeting its current financial obligations. I am not confident that any penalty imposed against BEL is likely to be paid however, it is important that the Authority continue to send strong messages to parties entering into Records of Settlement, that failure to adhere to them will not be tolerated. Parties who breach Records of Settlement can expect to face financial consequences for their breaches.

[15] The breach was for payment to the Crown in settlement of matters raised by a Labour Inspector. I have taken into account that the payment was not for the use of named individuals which means no employees will be disadvantaged by the non-

¹ The Employment Relations Act 2000 section 135(2).

payment of the amount under the Settlement and no employees have been deprived of any money.

[16] Taking all the factors into account including the level of the breach I consider an appropriate penalty to be \$500.

[17] Bay Enterprises Limited is ordered to pay a penalty of \$500 into the Authority within seven (7) days of the date of this determination which will then be paid to the Crown.

Costs

[18] The Labour Inspector is entitled to be reimbursed for the costs of bringing the application to the Employment Relations Authority. Bay Enterprises Limited is ordered to pay to the Labour Inspector the sum of \$71.56 being reimbursement of the filing fee within seven (7) days of the date of this determination.

[19] There is no evidence any legal costs were incurred by the Labour Inspector in pursuing this matter and given that it was determined on the papers currently before the Authority no further costs award will be made.

Vicki Campbell
Member of the Employment Relations Authority