

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 142/10
5315674

BETWEEN IAN LAWSON
Applicant

AND PERFORMANCE ALL
PROPERTY SERVICES
WELLINGTON LTD
Respondent

Member of Authority: P R Stapp

Representatives: Bede Laracy for Applicant
Ian Reid for Respondent

Investigation Meeting: Telephone conference and on the papers 3 September
2010

Determination: 7 September 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant applied to enforce a payment in a record of settlement recorded by a mediator from the Department of Labour. Upon the application being made in the Authority the respondent made a payment by cheque. This caused a further delay until the cheque was cleared. The cost to the applicant has been the filing fee of \$70. The applicant raised new penalty claims in the Statement of Problem, and is seeking a penalty for non compliance with the terms of settlement.

[2] The respondent has declined to pay any more to the applicant.

[3] The first matter is that the terms of settlement recorded by the mediator were in full and final settlement. That prevents the applicant pursuing his different penalty claims made in the Statement of Problem, I hold.

[4] The outstanding issue is about the respondent's delay in meeting the obligations under the terms of settlement to make a payment on time. It has admitted payment was late.

[5] There is a difference of opinion about advice being given for the late payment, and if an explanation for any delay was properly provided at the time. There has been no independent evidence to explain the situation. Therefore, and since the payment has been made, I am not inclined to pursue that any further.

[6] I hold that since the respondent has paid the sum due this is not a matter for a penalty for non compliance with the terms of settlement. This is because there is no evidence of the respondent acting deliberately and or wilfully in not paying on time.

[7] The lateness of the payment, however, deprived the applicant of receiving a payment on time and necessitated a statement of problem being filed in the Authority to get the money. The respondent must take responsibility for the late payment and depriving the applicant of the payment on time. It appears that the payment was made by the respondent because the applicant filed in the Authority for enforcement. For these reasons the respondent is to pay the filing fee to Mr Lawson as he has been put to unnecessary cost. No other costs are involved and quite properly so.

[8] Mr Laracy made a further written submission on 6 September. Ordinarily I would invite a reply, but the submission has added nothing new.

Orders of the Authority

[9] The applicant's claims for penalties are dismissed.

[10] Performance All Property Services Wellington Limited is to pay Ian Lawson the \$70 filing fee.

P R Stapp
Member of the Employment Relations Authority