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Li v Mascot Commerce Limited (Auckland) [2018] NZERA 233; [2018] NZERA Auckland 233 (24 July 2018)

Last Updated: 1 August 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2018] NZERA Auckland 233
3031197

BETWEEN YIFAN LI Applicant

A N D MASCOT COMMERCE LIMITED

Respondent

Member of Authority: T G Tetitaha

Representatives: Y Li, in person

Z Wang & X Yue for Respondent

Investigation Meeting: 24 July 2018 at Auckland

Submissions Received: 24 July 2018 from Applicant

24 July 2018 from Respondent

Date of Oral Determination: 24 July 2018

ORAL DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Yifan Li seeks a compliance order in respect of a record of settlement the parties signed on or about 23 April 2018.

[2] The record of settlement required Mascot Commerce Limited to pay Mr Li's salary it owed and all other entitlements for the period of 28 December 2017 to 18 July 2018 by \$1,000 fortnightly instalments. These instalments were to start by 30 April 2018.

Agreed Facts

[3] Both parties today have accepted the following facts:

(a) Mascot Commerce Limited made three \$1,000 payments before their business deteriorated to the point where they had difficulty meeting the directors and owners living expenses.

(b) Payments to Mr Li were unilaterally reduced to \$200 per fortnight.

(c) The reduction in the payments is a breach of the record of settlement. (d) \$5,397.42 remains outstanding and owed to Mr Li.

(e) Payment of a penalty is appropriate.

Penalty

[4] A penalty under [s.149\(4\)](#) of the [Employment Relations Act 2000](#) may be awarded for breaches of records of settlement. [Section 133](#) of the Act applies to determining quantum and [s136](#) to recipient of the payment. A lower level penalty of

\$200 is appropriate. It is also appropriate for that penalty to be paid in its entirety to Mr Li. This is because the breach of the record of settlement has directly affected Mr Li only because he has and continues to lose use of his money. There is no purpose served by payment to the Crown of such a small amount.

Compliance Order

[5] After discussions with the parties, the following compliance order is made by consent:

A. Mascot Commerce Limited is ordered to comply with the record of settlement dated 23 April 2018 in the following ways:

(a) Making a payment to Yifan Li of \$2,000 by 28 August 2018; and

(b) Making 16 fortnightly payments to Yifan Li of \$200 on the following dates:

2018	2019
• September 11, 25	• January 1, 15, 29
• October 9, 23	• February 12, 26
• November 6, 20	• March 12, 26
• December 4, 18	• April 9

(c) Making a further and final fortnightly payment of \$397.42 by 23 April

2019 comprising:

(i) \$197.42 being the remainder of the debt owed to Yifan Li under the record of settlement 23 April 2018;

(ii) \$150 comprising a penalty for breaches of the record of settlement to be paid in its entirety to Yifan Li pursuant to s.136(2) of the Act; and

(iii) \$50 as a contribution towards Yifan Li's filing fees in respect of

this compliance order.

Other matters

[6] Both parties have raised with me the issue of whether they may avoid payment of the penalty if they are able to repay the debt in its entirety prior to the 23 April

2019. If that occurs that will be up to Mr Li to determine whether he would seek payment of the penalty or not. I will leave that to the parties to discuss amongst themselves. That is not a matter that needs to be dealt with within this compliance

order determination.



T G Tetitaha

Member of the Employment Relations Authority

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