

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 199
3166162

BETWEEN DANIEL MAINWARING
Applicant

AND RAC GROUP LIMITED
Respondent

Member of Authority: David G Beck

Representatives: Paul Mathews, advocate for the Applicant
Robert Thompson, advocate for the Respondent

Investigation Meeting: 16 May 2022 by videoconference

Submissions Received: 16 May 2022 from the Applicant
16 May 2022 from the Respondent

Date of Determination: 17 May 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In a determination issued on 21 January 2022 the Authority found an established personal grievance of unjustified dismissal and ordered RAC Group Limited to pay Daniel Mainwaring:

- (i) \$7,200 pursuant to s123(1)(c)(i) Employment Relations Act 2000.

(ii) \$5,635 (gross) lost wages pursuant to s123(1)(b) Employment Relations Act 2000.

[2] The above compensatory awards have, to date, not been paid by RAC Group Limited. To remedy the situation Mr Mainwaring seeks a compliance order pursuant to section 137(1)(b) Employment Relations Act 2000 (“the Act”).

The Authority’s investigation

[3] RAC Group Limited responded to Mr Mainwaring’s statement of problem and their advocate attended the investigation but no evidence was filed by any RAC Group Limited director or employee. Mr Mainwaring and his advocate attended the investigation meeting.

[4] Pursuant to s 174E of the Act, I make findings of fact and law and outline conclusions to resolve the disputed issue and make orders but I do not record all evidence.

[5] Mr Mainwaring’s advocate detailed unsuccessful attempts to resolve the matter in correspondence with RAC Group Limited’s advocate that only elicited a response that the matter would be filed in the Employment Court.

[6] Mr Thompson in a submission suggested that whilst his client has made an application for a de-novo hearing in the Employment Court pursuant to s 179 of the Act and expects such to occur in early July 2022, no application for a stay of the Authority’s decision has been sought in the court, suggesting such an application would be impractical on financial grounds. Mr Thompson essentially suggested a de-facto stay should be granted by the Authority for fear that Mr Mainwaring would return to the United Kingdom should the compliance order be granted. No other reason was given for why RAC Group Limited failed to meet the terms of the Authority decision in a timely manner.

[7] The Act is clear that an election under s 179 does not operate as a stay of Authority proceedings “unless the court, or the Authority so orders”.¹ In considering RAC Group’s submission that I acknowledge was not a formal stay application (thus not placing Mr Mainwaring on notice of such) I had no evidence to suggest, as advanced, that

¹ Section 180 Employment Relations Act 2000.

Mr Mainwaring is likely to return to the UK and no documentary evidence of RAC Group being in any financial difficulty. Mr Mainwaring's evidence was that he is seeking to obtain permanent residency and has a new job with an income that has allowed him to save for the purpose of buying a property in New Zealand.

[8] If I were to grant the stay, I would be depriving Mr Mainwaring of an amount of compensation for a significant period since the Authority determination was issued. In the circumstances, for lack of compelling reasons or evidence being advanced, I decline to issue a stay of proceedings.

Finding

[9] I find that RAC Group Limited has not paid the compensatory sums awarded by the Authority and that their advocate has not advanced sufficient reasons for them not meeting the created obligation. The compliance order sought by Daniel Mainwaring is granted on the following terms

Order

[10] By order of the Authority under s 137 Employment Relations Act 2000 RAC Group Limited is to pay to Daniel Mainwaring no later than 14 days from the date of this determination:

- (i) \$7,200 pursuant to s 123(1)(c)(i) Employment Relations Act 2000 and:
- (ii) \$5,635 (gross) lost wages pursuant to s 123(1)(b) Employment Relations Act 2000.

Costs

[10] Costs are at the discretion of the Authority and here Daniel Mainwaring was successful in his action for a compliance order during a short hearing and has sought a modest

costs contribution that I will fix at \$400 and a filing fee of \$71.56 to be paid by RAC Group Limited to Daniel Mainwaring.

David G Beck
Member of the Employment Relations Authority