

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 153
5551734

BETWEEN CLYDE STUART MAJOR
 Applicant

A N D FUTURE PRINT & DESIGN
 LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
 No appearance by Respondent

Investigation Meeting: 28 May 2015 at Auckland

Date of Determination: 28 May 2015 Oral Determination
 28 May 2015 Written Determination

ORAL DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mr Major was formerly employed by Future Print & Design Limited (Future Print). The parties attended mediation with a mediator from the ministry of Business Innovation and Employment in respect of an employment relationship problem they had.

[2] Mediation resulted in a signed Record of Settlement under s.149 of the Employment Relations Act 2000 (the Act). This was signed by the parties and the mediator on 21 May 2014.

[3] Mr Major claims that Future Print has not complied with clause 3 of the Record of Settlement which required it to make a payment to him within 14 days of the parties signing the Record of Settlement (i.e. by 04 June 2014).

[4] Mr Major says that no payment(s) have been received. Mr Major seeks;

- a. a compliance order against Future Print;

- b. interest on the outstanding amount until it has been repaid in full;
- c. that a penalty be imposed on Future Print for breaching the s.149 Record of Settlement.

No appearance by respondent

[5] Mr Major's Statement of Problem was served on Future Print on 15 April 2015. Future Print did not file a Statement in Reply nor did it seek leave to file a Statement in Reply out of time.

[6] The notice of investigation meeting was served on Future Print on 21 May 2015. Future Print did not appear at the investigation meeting and it has not had any communications with the Authority since the Notice of Investigation Meeting was served.

Issues

[7] The following issues are to be determined:

- a. Did Future Print breach the s.149 Record of Settlement?
- b. If so, what if anything is Mr Major owed?
- c. Should a penalty be imposed for any breach of the Record of Settlement?
- d. Should Mr Major be awarded interest?
- e. What if any costs should be awarded?

Did Future Print breach the s149 Record of Settlement?

[8] Mr Major gave evidence on oath that he had not been paid any of the money payable to him under the Record of Settlement. His evidence was uncontested so I had nothing to contradict that.

[9] I am satisfied on the balance of probabilities that Future Print breached clause 3 of the Record of Settlement because it failed to pay the amount that was due to have been paid to Mr Major by 04 June 2014.

What is Mr Major owed?

[10] I find that Mr Major is still owed the \$1,800 he was due to be paid under clause 3 of the Record of Settlement. Future Print is ordered to comply with its obligations under clause 3 of the Record of Settlement by paying Mr Major \$1,800 within 28 days of the date of this determination.

Should a penalty be imposed for breach of the Record of Settlement?

[11] I consider it is appropriate to impose a penalty on Future Print for breaching the Record of Settlement. The Record of Settlement obligations were entered into over a year ago but despite that they have still not be fulfilled. I consider that is unacceptable.

[12] Parties are entitled to rely on a s.149 Record of Settlement. I consider the interests of justice make it appropriate to impose a penalty of \$1,500 on Future Print to signal disapproval of its actions, to punish it for breaching a s.149 Record of Settlement and to act as a deterrent to others who may be tempted to ignore their s.149 Record of Settlement obligations.

[13] Future Print is ordered to pay \$1,000 of the penalty imposed on it directly to Mr Major within 28 days of the date of this determination. The remaining \$500 of the penalty that has been imposed on Future Print is to be paid by it to the Crown bank account.

Should Mr Major be awarded interest?

[14] I am satisfied this is an appropriate case in which to award interest. Future Print has had the benefit of using \$1,800 which it should have paid to Mr Major almost a year ago. Mr Major should be compensated for the loss of the use of this money.

[15] Future Print is ordered to pay 5% interest on the amount of \$1,800 from 04 June 2014 until that amount has been repaid in full.

Costs

[16] Legal costs are not payable as Mr Major represented himself. Mr Major has incurred a \$71.56 filing fee so he is entitled to be reimbursed for that.

Orders

- [17] Within 28 days of the date of this determination Future Print is ordered to:
- (a) Comply with clause 3 of the Record of Settlement by paying Mr Major \$1,800;
 - (b) Pay Mr Major 5% interest on \$1,800 from 04 June 2014 until that amount has been repaid in full;
 - (c) Pay Mr Major \$1,000 of the \$1,500 penalty that has been imposed on it for breaching the s.149 Record of Settlement;
 - (d) Pay the Crown bank account \$500 being the balance of the \$1,500 penalty which was imposed on it;
 - (e) Pay Mr Major \$71.56 to reimburse his filing fee.

Rachel Larmer
Member of the Employment Relations Authority