

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2011] NZERA Auckland 239
5335900**

BETWEEN BRIAN MOXEY
 Applicant

AND WESTMINSTER PACIFIC (NZ)
 LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in person
 No appearance for Respondent

Investigation Meeting: 3 June 2011

Determination: 3 June 2011

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] The Applicant, Mr Brian Moxey, has applied to the Authority under s 137 of the Employment Relations Act 2000 (“the Act”) for an order requiring the Respondent, Westminster Pacific (NZ) Limited (“WRNZ”) to comply with a determination given by the Authority.

[2] On 23 December 2010 under AA 524/10 the Authority ordered WPNZ to pay Mr Moxey the sum of:

- (i) \$16,285.65 gross in respect of non-payment of wages
- (ii) \$18,000.00 gross in respect of contractual notice
- (iii) \$4,828.97 gross in respect of accrued and annual leave entitlement
- (iv) \$5,000.00 compensation under s 123(1)(c)(i)

[3] On 25 February 2011 Mr Moxey applied to the Authority for a compliance order, claiming that WPNZ has not paid him the monies he was entitled to under the determination.

[4] WPNZ did not appear at the Investigation Meeting but sent an email in which Mr Kevin Mann, a director of WPNZ, claimed that WPNZ had ceased trading, was to be removed

from the Companies register, and there were no funds available in WPNZ from which to make payment to Mr Moxey.

[5] Mr Mann did not produce to the Authority any financial evidence substantiating WPNZ's claim to financial inability. However Mr Moxey produced evidence which substantiated that any action to remove WPNZ from the Companies House register had been suspended.

Compliance Order

[6] I am satisfied that WPNZ has not complied with the terms of the Authority's determination of 23 December 2010. It is just in the circumstances for an order to be made requiring WPNZ to comply with the determination.

[7] WPNZ is ordered to pay Mr Moxey \$16,285.65 gross in respect of non-payment of wage, \$18,000.00 gross in respect of contractual notice, \$4,828.97 gross in respect of accrued and annual leave entitlement, and \$5,000.00 in respect of compensation. WPNZ is also to pay Mr Moxey \$71.56 to Mr Moxey, the fee on the application for the compliance order.

[8] WPNZ is ordered to comply as ordered above within 14 days of service of this determination.

[9] For the information of WPNZ, failure to comply with an order such as this one made by the Authority under s 137 of the Act may provide a basis for an application to be made by Mr Moxey to the Employment Court for enforcement of the order. Under s140 of the Act, where the Court is satisfied that any person has failed to comply with a compliance order made under s137, the Court may order remedies, including a fine not exceeding \$40,000 and/or the seizure of property and for the proceeds of sale to be distributed to the person enforcing the Authority's order.

Costs

[10] As Mr Moxey represented himself, there is no order for costs.

Eleanor Robinson
Member of the Employment Relations Authority