

BETWEEN                      MARION MUNROE  
   Applicant  
  
AND                              CHEVIOT TOWN LTD T/A  
   SETTLERS TAVERN  
   Respondent

Member of Authority:        Eleanor Robinson  
  
Representatives:              Nicholas Koreneff, Advocate for Applicant  
   Christine & Frank Wade Representatives for Respondent  
  
Investigation Meeting:        On the papers  
  
  
Date of Determination:        2 February 2017

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]        The Applicant, Ms Marion Munroe, seeks an order for interest in relation to terms of settlement agreed with her employer, Cheviot Town Ltd t/a Settlers Tavern (Cheviot Town). The agreement reached by the parties was set out in a Terms of Settlement document dated 10 November 2016 and incorporated into a Determination of the Authority dated 10 November 2016'

[2]        In the Terms of Settlement Cheviot Town was to make the balance of the monies owed to Ms Munroe by 24 November 2016, but failed to do so until 5 January 2017, 5 weeks later.

[3]        Mr Koreneff on behalf of Ms Munroe is seeking compensation, costs, the lifting of confidentiality agreed to by the parties, costs and a penalty against Cheviot Town for breaching the terms of the Agreement.

## **Determination**

### *Compensation*

[4] Cheviot Towns has defaulted in respect of the agreed Terms of Settlement by making a late payment of the balance of monies to Mrs Munroe.

[1] Compensation is not usually awarded in the context of a compliance order, but the Authority has the power to award interest pursuant to clause 11 of the Schedule 2 of the Employment Relations Act 2000 (the Act) at the rate prescribed by the Judicature Act 1908, which is currently 5% per annum".

[2] I consider that it is appropriate that Cheviot Town is ordered to pay interest arising from the period when the balance fell due for payment and the date it was actually paid.

**[3] I therefore order Cheviot Town to pay Ms Munroe interest on the balance of monies due on 14 November 2016 and finally paid on 5 January 2017 at the rate prescribed by the Judicature Act 1908, which is currently 5% per annum.**

### *Lifting of Confidentiality*

[4] Mr Koreneff is applying that the confidentiality which was included as a Term of Settlement and agreed between the parties be lifted as a result of Cheviot Towns default.

[5] Confidentiality can only be lifted by consent of the parties to the terms of Settlement, and in this case, one of the parties, Cheviot Town, does not so agree.

[6] I determine that the term as to confidentiality is not lifted and remains in place. However I would remind the parties that the confidentiality term of the Terms of Settlement is binding on the parties and a breach of it may incur penalty action.

### *Penalty*

[7] Mr Koreneff is seeking a penalty against Cheviot Town pursuant to s 149(4) of the Employment Relations Act 2000 (the Act) for the late payment of the balance of monies due under the Terms of Settlement.

[8] Cheviot Town argue that the late payment arose in extraordinary circumstances in which an armed robbery of one of its premises had taken place in the early hours of the

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<sup>3</sup> Judicature (Prescribed Rate of Interest) Order 2011 (SR2011/177)

morning of the Investigation Meeting. At the time of agreeing to the Settlement, Cheviot Town stated that it was unaware of exactly how much money had been stolen in the armed robbery and believed the funds to meet the Terms of Settlement payment to the Applicant was available.

[13] It subsequently transpired that the armed robbery had impacted on the ability of the Respondent to meet the Terms of Settlement payment to the Applicant, however it had been able to fulfil that commitment after a relatively short period of time

[4] Penalties are generally accepted to be imposed in respect of punishment and deterrence. In this case I note that the default in payment was remedied within a relatively short period of time. I accept that the default did not arise as the result of a decision to evade its commitments by Cheviot Town.

[5] I do not find the breach to have been serious and sustained and therefore decline to award a penalty.

#### Costs

[6] The Investigation Meeting in respect of this matter was dealt with "on the papers". It was a relatively straightforward matter, no hearing was required and the matter was decided on the basis of a telephone conference and on written submissions from the parties.

[ 17] Accordingly I consider it appropriate that costs lie where they fall.

[18] However should the parties seek costs, the Applicant may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Respondent will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

[7] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

Eleanor Robinson  
Member of the Employment Relations Authority