



Employment Court of New Zealand

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Myatt v Community Medical Centre Limited [2014] NZEmpC 149 (15 August 2014)

Last Updated: 28 August 2014

IN THE EMPLOYMENT COURT AUCKLAND

[\[2014\] NZEmpC 149](#)

ARC 44/14

IN THE MATTER OF an application for penalty for breach
 of
 compliance order

BETWEEN DAVID MYATT, LABOUR INSPECTOR
 Plaintiff

AND COMMUNITY MEDICAL CENTRE
 LIMITED
 Defendant

Hearing: 15 August 2014
 (Heard at Auckland)

Appearances: SM Carr, counsel for
 plaintiff
 No appearance for
 defendant

Judgment: 15 August 2014

ORAL JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] This is an application for a fine to be imposed on the defendant for its failure to comply with a compliance order made by the Employment Relations Authority under [s 137](#) of the [Employment Relations Act 2000](#) (the Act).

[2] The matter was first called on 24 July 2014 and although the defendant had not then taken any formal step to oppose the application, Mr S Amarsee appeared as its agent at the hearing. It appears from the documents that are in evidence that Mr Amarsee is a director of the company and the Practice Manager.

[3] On that occasion, by agreement the case was adjourned until today to allow

Mr Amarsee and the Labour Inspector to have discussions with a view to seeing whether there could be compliance with the Authority's order and to achieve the

DAVID MYATT, LABOUR INSPECTOR v COMMUNITY MEDICAL CENTRE LIMITED NZEmpC AUCKLAND [\[2014\] NZEmpC 149](#) [15 August 2014]

Labour Inspector's ultimate objective of having accurate employment records

created and continued to be held by the defendant.

[4] Following that meeting at court, there was an exchange of email correspondence between Mr Amarsee and the Labour Inspector in which I accept the Labour Inspector set out comprehensively the nature of the information and its formatting that the legislation requires and that the Labour Inspector expected of the defendant.

[5] At 9.31 pm last evening, Mr Amarsee emailed the Labour Inspector indicating that he had not been able to get all of the information

that the Labour Inspector wished, to him. In fact, realistically, what has been supplied to the Labour Inspector is probably a very modest amount of information that is required.

[6] Mr Amarsee sought an extension of time until the end of August 2014 to provide the balance of the information. Earlier this morning the Labour Inspector emailed Mr Amarsee in reply indicating that he was not satisfied with the sufficiency of the information provided and was not agreeable to an extension of time. He suggested that Mr Amarsee should apply to the Court for that. When the matter was called at 11 am today there was no appearance for the defendant or by Mr Amarsee in particular. In those circumstances, the Labour Inspector does seek the imposition of a penalty, a fine.

[7] I am satisfied that the defendant is aware of today's hearing and so it is safe to continue in its absence. In the circumstances outlined above, I am satisfied that the defendant was served and is fully aware of the proceeding.

[8] The background is this. By a determination issued on 19 November 2013,¹ the Authority required the defendant to comply, within 28 days, with the terms of an Improvement Notice issued on 3 September 2013, and to reimburse the Labour Inspector's filing fee in the Authority of \$70.56. The defendant did not take any step

in the Authority proceedings or appear at its investigation meeting.

1 *David Myatt (Labour Inspector) v Community Medical Centre Limited* [2013] NZERA Auckland

533.

[9] From the Authority's determination I note that the Labour Inspector issued an Improvement Notice² following admissions by the defendant of significant delays in paying staff wages. It is pertinent also that the Authority's determination notes that the defendant, which operated two medical clinics, had lost significant government funding in February 2012 with effect from 8 January 2013. The Authority accepted that this funding had constituted the vast majority of the defendant's income and that

one of its two South Auckland clinics had been closed as a result of that loss.

[10] The defendant failed to comply with the Improvement Notice issued by the Labour Inspector and with the Authority's compliance order within the time specified and, I am satisfied, has continued to fail to do so.

[11] As the Authority itself noted in its determination,³ although there may have been very significant financial circumstances making continued operation and employment of staff very difficult, the way to deal with these was not to fail to pay arrears and to ignore such matters while continuing to employ affected staff. Again, as the Authority noted, the law recognises the right of an employer in these circumstances to end employment relationships for reasons of redundancy after good faith consultations and like obligations have been fulfilled. Had these matters been disclosed to, and discussed with, the Labour Inspector, I suspect that a sensible and fair resolution may have been able to be reached but it has now gone beyond that stage and that did not occur.

[12] The maximum fine for non-compliance with an Authority compliance order is \$40,000. The defendant's failure or refusal to meet its obligations in law is serious and has been sustained.

[13] A compliance order is a discretionary remedy, as is the consequence for non-compliance with it. The Court is given a good deal of flexibility in how it deals with

such applications.

² Under [s 223D](#) of the Act.

³ At [9].

[14] The Labour Inspector's objective is still to ensure compliance by the defendant with its employment obligations which I cannot ignore, however belatedly and minutely the defendant appears to have started the significant exercise of trying to comply. It appears that Mr Amarsee is attempting to do this himself without professional assistance and I would not wish to impose a consequence which means that compliance with the defendant's obligations simply ceases. I am also conscious of the fact that the defendant company is an operator of a community medical centre, previously two community medical centres, one of which closed as a result of cessation of funding.

[15] In these circumstances I propose to take an unusual course. I will not impose a fine today but I will indicate what I am minded to do unless there is significant and sustained compliance by the defendant with its obligations, both past and, to the extent that it can show the Labour Inspector that it will continue to do so, with its current and future obligations.

[16] To do that I propose to adjourn the proceeding finally to allow a fair period within which that should be done and to ensure that Mr Amarsee and the defendant are both aware of what has happened today and what is expected of them.

[17] The matter will be adjourned until 11 am on Monday 8 September 2014 when it will be called again.

[18] On that occasion the Court will need to be persuaded of the defendant's

compliance if a fine is not to be imposed. I can indicate that a fine in the region of

\$5,000 is contemplated by the Court, given the necessary balancing exercise between the seriousness of the breach and the defendant's resources. So that Mr Amarsee and the defendant are clear about this, it will be able to avoid that significant monetary penalty if it now

complies with the Authority's compliance order and co-operates with the Labour Inspector in providing the records that I am satisfied the Labour Inspector has illustrated must be complied with. I should say, for the defendant's information, that of course a fine is not in substitution for any arrears or other liabilities that the Labour Inspector may find in respect of the defendant's employment, so that it really is in the defendant's interest to get this matter resolved

and promptly. In that regard, I urge it to consider taking professional advice about its obligations. I have no doubt that the Labour Inspector would be able to suggest where this advice might be able to come from if Mr Amarsee were to inquire of him.

[19] I think, however, that the Labour Inspector is entitled to be reimbursed for costs and disbursements to this point irrespective of the final outcome of the case. I direct the defendant to repay to the Labour Inspector the sum of \$306.67 for the court filing fee, and the sum of \$500 (being two sums of \$250) for costs on the two occasions that the matter has been in court so far.

GL Colgan
Chief Judge

Judgment delivered orally at 11.41 am on Friday 15 August 2014

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