

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 114/08
5117452

BETWEEN YUSMARI PEARCE
 Applicant

AND MANE HAIR AND BEAUTY
 (2007) LIMITED
 Respondent

Member of Authority: R A Monaghan

Representatives: C Rowe, Advocate for Applicant
 D Gibbs, Advocate for Respondent

Submissions received: 14 March 2008 from Applicant
 13 March 2008 from Respondent

Determination: 27 March 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Yusmari Pearce and Mane Hair and Beauty (2007) Limited trading as Mane Attraction (“Mane Attraction”) are parties to a record of settlement of an employment relationship problem which was reached in accordance with s 149 of the Employment Relations Act 2000.

[2] The settlement includes an agreement by Mane Attraction to make two payments to Ms Pearce. One was to be made immediately, while the second was to be made within 7 days of the issue by the mediation service of the record of settlement. Neither of these payments was made in accordance with the terms of settlement, although a single payment of \$500 has been made in terms of an offer to make payment by instalments.

[3] Ms Pearce has rejected Mane Attraction's further offers and seeks an order for compliance with the terms of the settlement agreement.

[4] By agreement with the parties, this application has been dealt with on the papers.

Determination

[5] Section 138(4A) of the Employment Relations Act provides:

“If the compliance order relates in whole or in part to the payment to an employee of a sum of money, the Authority may order payment to the employee by instalments, but only if the financial position of the employer requires it.”

[6] Mane Attraction says it is in a tight financial position and cannot make the payments in a lump sum. Hence it offered to make payments at \$500 per month, with one payment in that amount having been made already.

[7] With a view to the possibility of an order in terms of s 138(4A) I sought further information about its financial position from Mane Attraction. The result is that, while I accept the business is struggling, there is a high threshold to be reached before it can be said an employer's financial position 'requires' an order that payment be made by instalments. Similarly, the Authority may order payment by instalments 'only if' that threshold is reached.

[8] The material provided to me shows Mane Attraction is making a loss, and that its bank has expressed concerns about cash flow and overdrawing in relation to accounts of that and other businesses in which the directors have an interest. The shareholders have advanced monies, in part in order to address these matters. While this information, together with the assertions of Ms Gibbs, has led me to accept the business is struggling, it does not persuade me the company's financial position has become so serious that an order for payment of the settlement amount by instalments is required.

[9] Mane Attraction is therefore ordered to pay forthwith to Ms Pearce:

- (a) outstanding wages and holiday pay in the sum of \$262.56 (nett); plus
- (b) \$3,500 - \$500 already paid, being \$3,000 (nett).

Penalties

[10] Ms Rowe's submissions included an invitation to the Authority to consider whether penalties for breach of the settlement and breach of good faith are appropriate. These are in effect new or additional claims, and it is not appropriate to raise new or additional claims for the first time in submissions.

[11] It is open to Ms Rowe to seek penalties if she wishes, but these matters do not fall within the scope of this determination.

R A Monaghan

Member of the Employment Relations Authority