

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Kerry Rowe (Applicant)
AND Groganic Fertilisers Limited (Respondent)
REPRESENTATIVES John Dewar for Applicant
Michael Gould for Respondent
MEMBER OF AUTHORITY Robin Arthur
**INVESTIGATION MEETING
BY TELEPHONE CONFERENCE** 2 March 2007
DATE OF DETERMINATION 2 March 2007

DETERMINATION OF THE AUTHORITY

[1] The applicant seeks an order requiring the respondent to comply with the terms of a settlement agreement which became orders of the Authority by a consent determination made orally on 19 January 2007 and issued in writing on 22 January 2007 (AA 14/07).

[2] The applicant's personal grievance was settled, on a full and final basis, during an investigation meeting in Hamilton on 19 January 2007.

[3] The respondent was to provide a written reference within 14 days and to pay \$14,000 compensation under s123(1)(c)(i) of the Employment Relations Act 2000 ("the Act").

[4] On 14 February 2007 the applicant applied for a compliance order alleging that the respondent had not provided the reference and had not paid the compensation. He seeks an order, interest on the amount owed in compensation and his costs for this application.

[5] By statement of reply lodged on 23 February 2007 the respondent apologised for not providing the reference and said it would do so shortly. It stated that the company "*presently has no funds with which to meet the payment of compensation*" but would make the payment "*immediately that it is in funds*".

[6] By telephone conference with the parties' representative today I heard from Mr Dewar that, as of 1 March, his client had not received the written reference and the compensation payment had not been made. Mr Dewar had attempted to get the respondent to pay the money.

[7] Mr Gould advised his instructions were that the respondent had cash flow problems. The compensation payment was not being ignored but the company had a number of creditors to be paid. He had asked his client to consider whether payment by instalments could be proposed but had no instructions on that suggestion.

Determination

[8] While the settlement agreement provides for the written reference to be provided within

14 days, the clause on the compensation payment does not include a time frame. Mr Dewar says the reference to 14 days was intended to cover the compensation payment too but I do not consider I need to look beyond the plain wording of the agreement. There is no reference to the payment being made at some unspecified later date that the respondent considers convenient. The respondent would not have been acting in good faith if it made the agreement knowing that it was not able to pay the amount agreed within a reasonable time.

[9] In the absence of a set period or date, payment must be made within a reasonable time. The respondent has failed to provide sufficient information on its actual business position for me to conclude that it is not reasonable now for it to make good on the promise it made six weeks ago.

[10] This was a consent determination, not a resolution imposed by the Authority. The applicant is entitled to the fruit of the agreement without further delay. However that agreement did not provide for interest to accrue until the compensation payment was made and I do not consider an order for interest is necessary at this stage. The applicant is however entitled to his costs in bringing this application.

Compliance order

[11] The respondent is ordered to:

- (a) pay to the applicant within 14 days of the date of this determination the full agreed amount of \$14,000 compensation; and
- (b) provide a written reference to the applicant within 7 days of the date of this determination.

Costs

[12] The respondent is further ordered to pay to the applicant the sum of \$250 as his costs in bringing this application and the sum of \$70 in reimbursement of his fee for lodging this application.

Robin Arthur
Member of Employment Relations Authority