

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2011] NZERA Auckland 259
5341215**

BETWEEN JODY REYNOLDS
Applicant

AND WHITEHEAD SIGNS LIMITED
Respondent

Member of Authority: Eleanor Robinson

Representatives: Leanne Reynolds, Advocate for Applicant
Jacques de Beer, Advocate for Respondent

Investigation Meeting: 17 June 2011 at Auckland by telephone conference

Determination: 17 June 2011

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 3 March 2011 a Record of Settlement (“the Settlement”) was signed under s 149 of the Employment Relations Act 2000 (“the Act”). The parties to the Settlement were the Applicant, Mr Jody Reynolds, and the Respondent, Whitehead Signs Limited (“WSL”). The Settlement was signed by Mr Jacques de Beer, a Director of WSL. The Record was also signed by a Mediator employed by the Department of Labour.

[2] The issue now brought before the Authority by Mr Reynolds is that WSL has not complied with clause 3 of the Settlement, which states:

Whitehead Signs Ltd agrees to pay the outstanding sum plus interest at 6% being a total of \$4908.98 by weekly direct debit payments of \$150 for 32 weeks plus one final payment of \$108.98 in the 33rd week.

[3] The Settlement was certified under s 149 of the Act by the Mediator. That certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms:

- (i) were final, binding and enforceable; and

- (ii) could not be cancelled; and
- (iii) could not be brought before the Authority or the court for review or appeal, except for the purposes of enforcing those terms.

[4] The Authority set a hearing date of 17 June 2011, which was communicated to the parties by a Notice of Investigation Meeting. The parties agreed to the matter being heard by means of a telephone conference.

[5] Mrs Reynolds explained that although WSL had since made payments such that the agreed schedule of payments had been brought up to date, WSL had breached the Settlement immediately following the mediation in that no payments were made as agreed for the first seven weeks after the date of the Settlement.

[6] Mr de Beer explained the breach as being due to the unavailability of his wife to countersign cheques during the seven week period. Mr de Beer also explained that WSL had experienced some financial difficulties during that period.

[7] Clause 4 of the Settlement states:

If the weekly payments are not made the whole sum immediately becomes due and will attract penalty interest of 10% on the outstanding amount until payment is made.

Determination

[8] From the evidence available to the Authority, I am satisfied that WSL has failed to comply with the Settlement.

[9] **In order to effect compliance with clause 4 of the Settlement, I therefore order WSL to pay Mr Reynolds, no later than 14 days from the date of this determination, the outstanding sum of \$2,808.98 plus penalty interest at the rate of 10%, making a total sum of \$3,089.88.**

[10] For the information of WSL, 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 Reynolds 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

[11] As Mr Reynolds was not legally represented, there is no order for costs.

Eleanor Robinson
Member of the Employment Relations Authority