

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 171
5536722

BETWEEN JASPREET SINGH
SAWHNEY
Applicant

A N D IJ AND PK ENTERPRISES
LIMITED
Respondent

Member of Authority: T G Tetitaha
Representatives: Applicant in person
P Singh, Respondent Director
Investigation Meeting: 16 June 2015 at Auckland
Submissions received: On the day from both parties
Date of Oral Determination: 16 June 2015
Date of Determination: 17 June 2015

ORAL DETERMINATION OF THE AUTHORITY

- A. An order pursuant to s.137 of the Employment Relations Act 2000 that IJ and PK Enterprises Limited is to comply with clause 5 of the Record of Settlement dated 15 October 2013 by payment to Jaspreet Singh Sawhney of the balance of \$7,500 within 28 days of the date of this determination.**
- B. An order pursuant to ss.135 and 136 of the Employment Relations Act 2000 that IJ and PK Enterprises Limited pay a penalty of \$1,000 to the Authority. I direct the whole of the penalty is then to be paid to Jaspreet Singh Sawhney.**
- C. As both parties were self-represented no costs shall be awarded.**

Employment relationship problem

[1] Mr Sawhney seeks a compliance order regarding non-payment of sums owed to him under a Record of Settlement dated 15 October 2013. He also seeks a penalty for non-payment.

Facts leading to dispute

[2] The facts are largely undisputed. Both parties settled an employment dispute by way of a Record of Settlement dated 15 October 2013. The Record of Settlement required the respondent company to pay \$25,000 less applicable taxes in the following way:

- (a) An initial payment of \$4,000 within seven days of the date upon which the agreement took effect.
- (b) A second payment of \$2,000 within 14 days of the date upon which the agreement took effect.
- (c) Three payments of \$2,500 per week within 21 days of the date upon which the agreement took effect.
- (d) One final payment of \$5,000 to be paid within seven days of the last payments in (c) above.

[3] The Record of Settlement also provided that if any one of the payments were not made on the due date the applicant may, by notice in writing, require the respondent to pay the entirety of the balance owed within 28 days.

[4] Both parties accept that between October 2013 and September 2014 approximately \$14,244.29 was paid by the respondent company, IJ & PK Enterprises Limited, to Mr Sawhney. Both parties agree the balance owed is \$7,500 net.

[5] On 1 November 2014 Mr Sawhney texted the respondent director, Praneel Singh seeking payment. He was told payments would restart in January 2015, but never did.

[6] In March 2015 Mr Singh made a proposal that payments could restart at \$50 per week. Mr Sawhney would not accept that offer. Instead he filed an application in

the Authority seeking the compliance order and penalties he wishes to have made today.

Issues

[7] The issues are relatively simple. They are:

- (a) Whether a compliance order should issue for non-payment of the sums owed under the Record of Settlement dated 15 October 2013?
- (b) Whether a penalty should be awarded for breaches of the Record of Settlement dated 15 October 2013?

Whether a compliance order should issue for non-payment of the sums owed under the Record of Settlement dated 15 October 2013?

[8] It is accepted the record of settlement has not been complied with. It is accepted \$7,500 is still owed to the applicant under the Record of Settlement. What is sought by the respondent is time to pay the debt owed. The respondent proposes the company repay the debt at \$50 per week for six months and then \$100 per week thereafter. There are \$31,075.36 debts in total are still owed by the company. The company has no income.

[9] Mr Singh, to his credit, is attempting to repay that respondent debt himself from his own income of \$72,000 per annum. His wife also works, but I understand may not contribute to the debt. Mr Singh's primary concern is that the respondent company owns the house they are living in. He lives there with his family including two daughters who attend a local school. The house is worth \$800,000 and has a mortgage of approximately \$500,000. Mr Singh also owns, through a family trust, another rental property elsewhere in Auckland. He tells me he is unwilling to sell these properties because they represent a lot of hard work by himself, his parents and other family members. He wished to sell when the market price increased.

[10] The law relating to compliance orders and to penalties is relatively clear. Section 137 of the Employment Relations Act 2000 (the Act) provides for the issuing of a compliance order where any person has not complied with any terms of a settlement that s151 of the Act provides may be enforced. This Record of Settlement falls within s151.

[11] Section 138(4A) of the Act provides where a compliance order relates to payment of money, I may order payment by instalments but only if the financial position of the employer requires it.

[12] I have difficulty concluding the financial position of the respondent employer requires payment by instalments. The company owns a house with equity of approximately \$300,000. Whilst I accept there may be hardship to the respondent director and his family, it is the respondent company's financial position I must take into account. I also take into account the previous non-payment and promises to pay that were never met as an indication payment by instalments may not occur.

[13] In my view, a compliance order should issue and I decline to make provision for payment by instalment by the respondent company.

[14] Accordingly, there is an order pursuant to s.137 of the Act that IJ and PK Enterprises Limited is to comply with clause 5 of the Record of Settlement dated 15 October 2013 by payment to Jaspreet Singh Sawhney of the balance of \$7,500 within 28 days of the date of this oral determination.

Whether a penalty should be awarded for breaches of the Record of Settlement dated 15 October 2013?

[15] I now turn to the issue of whether I should award a penalty against the respondent company.

[16] The law relating to penalties is also well known. I have a discretion as to whether or award a penalty of up to \$20,000 or dismiss the action under s.135 of the Act.

[17] There are a number of factors to consider in determining whether this is an appropriate case to award a penalty and the quantum of the penalty. These factors include:

- The seriousness of the breach;
- Whether breach is one-off or a repeated breach;
- The impact, if any, on the employee/respective employees;

- The vulnerability of the employee;
- The need for deterrence;
- Remorse shown by the party in breach; and
- The range of penalties the Authority may have imposed in other comparable cases.

[18] In my view a penalty is appropriate. This breach is serious - it has deprived the applicant of the payments set out in a Record of Settlement. It is a repeated breach that has been occurring since September 2014.

[19] The impact upon this applicant has been severe. His evidence today attested to lending from family and friends to meet his rent and food. He is a vulnerable applicant. He is a migrant worker due to leave New Zealand in September 2015 because he has no work. He had lost his job with the respondent, resolved those issues through the Record of Settlement but had been unable to pay for or retain his work visa due to the breach.

[20] From what I can tell from the Record of Settlement, the applicant settled to get funds to try and find work but was unable to do so, nor could he find a sponsor who to obtain residency or a further working visa. Mr Sawhney tells me he does not have any funds and would not be able to return to New Zealand to seek further compliance if this debt was to remain unpaid.

[21] There is a need for deterrence of people defaulting payments under records of settlement. I appreciate the respondent director is more concerned about his own personal financial situation as opposed the applicant's. However, it does demonstrate a lack of remorse.

[22] Penalties that have been imposed in these type of cases range from \$750 to \$3,000. In my view a penalty of \$1,000 is appropriate in these circumstances.

[23] I also direct that payment of that penalty be made to the applicant. This is because the losses he has suffered cannot be compensated by the compliance order alone and this is a breach of a private settlement agreement between the parties. Deterrence is a factor, but it is not the primary one warranting payment to the Crown.

[24] Accordingly, I also make an order pursuant to ss.135 and 136 of the Act that IJ and PK Enterprises Limited pay a penalty of \$1,000 to the Authority. I direct the whole of the penalty is then to be paid to Jaspreet Singh Sawhney.

[25] As both parties were self-represented no costs shall be awarded.

TG Tetitaha
Member of the Employment Relations Authority