

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 260
5333608

BETWEEN THIAGO SCHALCH
 Applicant

AND EASY STUDY & TRAVEL
 LIMITED
 Respondent

Member of Authority: Alastair Dumbleton

Representatives: Applicant in person
 Eduardo Goncalves, advocate for Respondent

Determination: (on papers) 17 June 2011

DETERMINATION OF THE AUTHORITY – No 2

Application for compliance order

[1] In a Determination of the Authority dated 28 March 2011 (under 5333608), for the reasons given a compliance order was made under s 137 of the Employment Relations Act 2000 requiring Easy Study & Travel Ltd to pay \$568 to Mr Thiago Schalch and do so within 14 days of service of the Determination. The company was also ordered to pay Mr Schalch \$71.56, being the application fee for the compliance order.

[2] The \$568 payment was one of five in the same amount that Easy Study & Travel Ltd had agreed to pay Mr Schalch after mediation had produced a Record of Settlement executed under s 149 of the Employment Relations Act.

[3] When Mr Schalch applied for the compliance order, Easy Study & Travel Ltd had defaulted on the first payment due on 25 January 2011. There was no evidence of default on the second payment, due on 28 February, and the remaining payments had not yet fallen due as at the date of application to the Authority.

[4] As compliance cannot be ordered on the basis of an anticipated breach but requires the breach to have occurred, the Authority adjourned making wider orders until after 31 May when the final payment was due, so it could find out then from Mr Schalch whether any or all of the payments were still outstanding.

[5] Mr Schalch has advised that he has received a total of \$640 which appears to represent the amount of the first payment and the filing fee, both of which were the subject of the Authority's 28 March compliance order. The balance outstanding is \$2,272. The Authority has also received an email from Mr Eduardo Goncalves, a director of Easy Study & Travel Ltd, who confirmed that there is no dispute about the amount outstanding and advised, "*We still need to pay \$2,272.*"

[6] Neither party considered that an investigation meeting was necessary and the Authority has therefore given this second Determination on the papers.

Compliance order

[7] Being satisfied that Easy Study & Travel Ltd has failed to comply with a Record of Settlement made under s 149 of the Employment Relations Act 2000, the Authority orders the respondent company to pay \$2,272 to Mr Schalch. The respondent company is to comply as ordered within 14 days of service of this Determination upon the company at its registered office and address for service, 4th floor, 220 Queen Street, CBD, Auckland.

[8] The Authority once again advises, for the information of the respondent company, that failure to obey a compliance order such as this one made under ss 137 and 151 of the Act may provide a basis for an application to be made to the Employment Court for enforcement of the order. Under s 140 of the Act, where the Court is satisfied that any person (which includes a company) has failed to obey a compliance order, the Court may order remedies. They may include a fine not exceeding \$40,000 and/or seizure of property, with the proceeds of sale of that property to be distributed to the person requiring enforcement of the Authority's order.

[9] In the Authority's first Determination reference was made to a debt allegedly owed by Mr Schalch to Easy Study & Travel Ltd. I note that the Disputes Tribunal in a decision dated 23 May 2011 has found, after hearing the parties, that the debt was in relation to course or tuition fees and that arrangements between the parties had not

originally been constructed on the basis that Mr Schalch would have to refund those fees if he left his employment. The respondent had expected Mr Schalch would remain in its employment and to ensure he did so it had been prepared to incur the cost of the particular course of study undertaken by Mr Schalch. Things changed when Mr Schalch resigned almost immediately after the course finished. The Disputes Tribunal referee noted that “*the parties did not address what happens if Mr Schalch resigns, either by way of discussion or in writing.*”

[10] Mr Schalch is entitled to have enforced the Record of Settlement which provided for payments set out in it to be in “*full and final settlement of all matters between the Applicant and Respondent arising out of their employment relationship.*”

A Dumbleton
Member of the Employment Relations Authority