

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2021] NZERA 408
3145841

BETWEEN	GURJIT SINGH Applicant
AND	JARNAIL SINGH DHALIWAL First Respondent
AND	VEER ENTERPRISE LIMITED Second Respondent

Member of Authority: Robin Arthur

Representatives: John Wood, advocate for the Applicant
Jarnail Singh Dhaliwal in person as First Respondent
and as director of Second Respondent

Investigation: On the papers

Determination: 20 September 2021

THIRD DETERMINATION OF THE AUTHORITY

[1] Mr Singh sought orders requiring Jarnail Singh Dhaliwal and Veer Enterprise Limited (VEL) to comply with two determinations of the Authority. An Authority determination issued on 10 June 2021 ordered VEL to pay lost wages, compensation and wage arrears to Mr Singh.¹ A second determination, issued on 20 July 2021, ordered VEL and Mr Dhaliwal to pay costs of \$5,500 to Mr Singh.²

[2] Payment of those sums was ordered within 28 days but no payment has been made. Mr Singh asked for an award of interest on the amounts due to him and for an award of further costs and expenses incurred in making this application.

¹ *Singh v Dhaliwal & Veer Enterprise Limited* [2021] NZERA 247 (the substantive determination).

² *Singh v Dhaliwal & Veer Enterprise Limited* [2021] NZERA 310 (the costs determination).

[3] Mr Dhaliwal and VEL did not lodge a statement in reply to Mr Singh's application for compliance orders, interest and further costs. Mr Dhaliwal did send the following response by email to the statement of problem:

I received a letter in which you asked for when I'll pay money to Gurjit Singh. I am writing this email to answer that question. I don't have money to pay in one payment, can you please do instalments of this money and I'll pay it in instalments. Thanks.

[4] By Minute of 2 September 2021 Mr Dhaliwal was advised of the opportunity to provide any relevant information and submissions he wanted the Authority to consider before determining Mr Singh's application. The Minute noted information about the financial position of VEL, which was the company Mr Singh has been employed by, was relevant to the issue of whether any compliance order made should allow for payment by instalments.

[5] By email on 2 September Mr Dhaliwal again said he would "pay in instalments". He provided the amounts he said he received in weekly salary and paid in weekly rent. He asked that instalments be set "according to that" and said "the company doesn't have anything". He did not suggest what instalment amounts VEL or he could pay.

[6] A reply sent to Mr Dhaliwal from the Authority again asked if he could provide any evidence about VEL's financial position. By email on 9 September he replied as follows:

As I mentioned earlier, Veer Enterprise has nothing and I have closed everything because of stress, I don't have any personal assets, not even a car. I have some assets in India (Home country), so I can sell them and pay in instalments. I am happy to pay this amount in instalments, please do instalments for 5 years, this is the only option I have. I am stressed because of these things, if you pressurise me more then I'll leave this country and will not pay anything. Thanks.

Legal framework

[7] When making a compliance order relating to payment to a worker of a sum of money the Authority may order those payments to be made by instalments, but it may only do so if the financial position of the employer "requires" it.³ The use of the word 'requires' means instalments are not ordered simply on the say so of the party who has

³ Employment Relations Act 2000, s 138(4A).

to pay the money or because instalments would be more convenient for that party. The need to pay by instalments must be supported by sufficiently detailed and verified financial and any other relevant evidence.

[8] In any matter involving the recovery of any money the Authority may also order payment of interest on the money due.⁴ Money in this context includes sums due as wage arrears and as remedies awarded as lost wages and distress compensation.⁵

The amounts in issue

[9] The amounts for which compliance orders were sought totalled \$26,051.25, before interest. These comprised the following elements:

- (a) \$6,750 awarded as lost wages, with interest sought on that amount from 9 July 2021 to the date of payment; and
- (b) \$10,000 awarded as distress compensation, with interest sought on that amount from 9 July 2021 to the date of payment; and
- (c) \$3,801.25 awarded as wages arrears, with interest sought on that amount from 30 March 2020 to the date of payment; and
- (d) \$5,500 awarded as costs, with interest sought on that amount from 18 August 2021 to the date of payment.

[10] The appropriate award for further costs and expenses incurred in making this compliance application, determined on the papers, was one quarter of the Authority's usual daily tariff, that is \$1,125. Adding the expense of paying the Authority fee of \$71.56, this amount for further costs and expenses totalled \$1,196.56.

[11] VEL has also been ordered to pay a penalty of \$3,000 for breaching the Wages Protection Act 1983 but that amount is due to the Authority, for transfer to a Crown Account. It is not part of Mr Singh's compliance application.

[12] Mr Singh has also been given leave under s 142Y of the Employment Relations Act 2000 (the Act) to recover the wage arrears of \$3,801.25 from Mr Dhaliwal personally if VEL is unable to pay those arrears.

⁴ Employment Relations Act 2000, Schedule 2, clause 11.

⁵ See *Sinclair v Datum Connect Ltd* [2014] NZERA Auckland 463 at [27].

Insufficient grounds to order payment by instalments

[13] There was insufficient information to show the financial position of Mr Singh's former employer, that is the company VEL, required payment of the amounts due by instalments. A simple declaration by Mr Dhaliwal that the company "had nothing" was not enough. The absence of adequate, verified information about assets, liabilities, income and expenditure meant VEL had not established it lacked means by which its debt to Mr Singh could be satisfied.

[14] Similarly, in respect of amounts that could be recovered from him in person, which are the wage arrears and some or all of the costs award made on a joint and several basis, the limited information from Mr Dhaliwal was not enough to support an order allowing him to pay those amounts by instalment. Even if it were, his suggestion that the amounts due be paid over five years was neither practical nor just.

Interest due

[15] Mr Singh has been deprived of amounts of money of which he is entitled to already have the use. This delay warrants use of the Authority's discretion to order interest on the amounts due to him.⁶ Interest is to be calculated from the dates that the payments fell due until they are paid by using the Civil Debt Interest Calculator.⁷

Costs and expenses on this application

[16] Mr Singh is also entitled to an order for further costs and expenses of \$1,196.56 incurred in making his application for compliance orders. Payment of that sum is due within 28 days of the date of this determination. As with the order for costs made in the substantive determination, the liability for those further costs and expenses is joint and several. This means that if one or other respondent party does not pay it, the other respondent party must pay that sum in full.

Orders for compliance, interest, payment of arrears, costs and expenses

[17] For the reasons given, VEL and Mr Dhaliwal must comply within 28 days of the date of this determination with the following orders as they apply to them.

[18] VEL must pay Mr Singh the following sums:

⁶ Employment Relations Act 2000, Schedule 2 clause 11.

⁷ <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>.

- (a) \$6,750 awarded as lost wages, with interest sought on that amount from 9 July 2021 to the date of payment; and
- (b) \$10,000 awarded as distress compensation, with interest sought on that amount from 9 July 2021 to the date of payment; and
- (c) \$3,801.25 awarded as wages arrears, with interest sought on that amount from 30 March 2020 to the date of payment.

[19] VEL and Mr Dhaliwal must, jointly or severally, pay Mr Singh:

- (a) \$5,500 awarded as costs, with interest sought on that amount from 18 August 2021 to the date of payment; and
- (b) \$1,196.56 awarded as further costs and expenses in relation to the application for compliance orders and interest.

[20] Mr Dhaliwal has been found liable under s 142Y of the Act for the wage arrears of \$3,801.25 due to Mr Singh. Accordingly, if VEL is unable to pay those arrears within 28 days of the date of this determination, Mr Dhaliwal must personally pay that sum to Mr Singh, also within this 28 day period.

[21] Under s 141 of the Act the orders made in this determination may be filed in the District Court and are then enforceable in the same manner as orders of the District Court. Alternatively, should VEL or Mr Dhaliwal fail to comply with the orders made, Mr Singh may apply to the Employment Court for exercise of its powers to fine, imprison or sequester the property of the person in default.⁸

Robin Arthur
Member of the Employment Relations Authority

⁸ Employment Relations Act 2000, s 138(6) and 140(6).