

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2018] NZERA Christchurch 113
3033974

BETWEEN HARJASJEET SINGH
Applicant

A N D VICKI MCMILLAN
Respondent

Member of Authority: David Appleton

Representatives: Parties self-represented

Investigation Meeting: Determined on the papers

Date of Determination: 10 August 2018

DETERMINATION OF THE AUTHORITY

- A. Within 7 days of the date of this determination, Ms McMillan is to pay to Mr Singh the gross sums of \$699.97, \$56, \$71.56 and a further sum of \$71.56.**
- B. There are no further orders in respect of costs.**

[1] By way of a determination dated 21 June 2018¹ I ordered Ms McMillan to pay to Mr Singh arrears of wages amounting to 27 hours, 45 minutes' worth of work, calculated by reference to the hourly rate that Mr Singh was entitled to receive during his last week at work,

¹ [2018] NZERA Christchurch 93

outstanding holiday pay and the sum of \$71.56, being the cost of lodging his application in the Authority.

[2] Mr Singh has lodged a further application with the Authority because Ms McMillan has not paid the sums ordered to be paid, even though she had admitted owing Mr Singh unpaid wages during a telephone case management conference call. In his new claim, Mr Singh has quantified the unpaid wages at \$699.97, by reference to an hourly rate of \$25.50.

[3] The new application by Mr Singh was served on Ms McMillan by Courier Post and email. She has not lodged a statement in reply. Courier Post has been unable to deliver the hard copy documents of the statement of problem but there has been no bounce back message from the email address, which was provided to the Authority by Ms McMillan during the last telephone case management conference call. I am satisfied, therefore, that the Authority has made reasonable attempts to bring the new application to Ms McMillan's attention. Furthermore, there was no difficulty in serving the Authority's original determination, which was effected by email to the same address.

[4] Section 137 of the Employment Relations Act 2000 (the Act) empowers the Authority to order a party to do a specified thing within a specified time when there has been a failure by that party to comply with, inter alia, an order or a determination made under the Act by the Authority.

[5] Despite admitting that she owed Mr Singh wages, Ms McMillan has failed to comply with the orders made in determination [2018] NZERA Christchurch 93 and has failed to engage with the Authority since the determination was issued. It is therefore appropriate to make a compliance order against Ms McMillan under s 137 of the Act.

[6] Within 7 days of the date of this determination, Ms McMillan is to pay to Mr Singh the following gross sums:

- a. \$699.97 in respect of unpaid wages;
- b. \$56 in respect of holiday pay on the above unpaid wages;
- c. \$71.56 in respect of Mr Singh's lodgement fee for application number 302492.

[7] I also order Ms McMillan to pay to Mr Singh within 7 days of the date of this determination a further sum of \$71.56 in respect of the cost of him lodging his further application for compliance.

[8] I draw to the attention of the parties the right under s 138 (6) of the Act of Mr Singh to apply to the Employment Court for the exercise of its powers under s 140(6) if Ms McMillan fails to comply with the compliance orders made in this determination. Section 140(6) confers powers upon the Court which exceed those of the Authority, including but not limited to the power to order:

- a. the person in default to be sentenced to imprisonment for a term not exceeding 3 months;
- b. that the person in default be fined a sum not exceeding \$40,000; and
- c. that the property of the person in default be sequestered.

[9] Mr Singh has also requested that Ms McMillan be “fined”. I take it that he means that the Authority should impose a penalty upon Ms McMillan for failing to comply with the orders of the previous determination. However, the Act does not empower the Authority to impose a penalty upon a party who has failed to comply with the orders of the Authority contained within a determination. As I have stated above, Mr Singh can apply to the Employment Court for orders, including fines, if Ms McMillan again fails to pay him, in breach the compliance orders made in this determination.

Costs

[10] As Mr Singh is self-represented, there are no further orders in relation to costs.

David Appleton
Member of the Employment Relations Authority