

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 385/09
5164340

BETWEEN DANIEL SMALL
Applicant

AND TITAN HENDERSON
SERVICES LIMITED
Respondent

Member of Authority: Alastair Dumbleton

Representatives: Hayden Martelli, advocate for Applicant
James Duckworth, counsel for Respondent

Telephone Conference: 2 November 2009

Determination: 3 November 2009

CONSENT DETERMINATION OF THE AUTHORITY

[1] In the course of the telephone conference with the parties' representatives, agreement was reached as to how Mr Small's employment relationship problem would be resolved.

[2] By consent, a compliance order is made as follows. Titan Henderson Services Limited is to comply with the written agreement it entered into with Mr Small on 17 July 2009 by paying \$3,500 to him or to his representative Mr Martelli. That payment is to be made by 5pm Tuesday, 17 November 2009.

[3] Further, pursuant to clause 11 of Schedule 2 of the Employment Relations Act 2000, Titan Henderson Services Limited is to pay interest on \$3,500 at 4.5% until the principal has been paid. Interest payable to date is \$47.03 and is accruing at a daily rate of \$0.4315.

[4] Also to be paid to Mr Small is the \$70 filing fee on his application for compliance.

[5] I record my view as given during the telephone conference that the settlement agreement signed by the parties on 17 July, although not within s 149 of the Employment Relations Act 2000 and therefore not enforceable by compliance under s 151, is nevertheless enforceable under the general compliance jurisdiction at s 137 of the Act.

[6] In particular, the parties' settlement is enforceable as a provision of an employment agreement. The situation in this case is analogous to that dealt with by compliance order made under the Employment Contracts Act 1991 in *Tucker v. Cerissi Leather Ltd* [1995] 2 ERNZ 11. The Court in that case regarded the terms of settlement, which were in effect a contract between the parties, as a further term of their employment agreement arising through a variation made to it in writing.

[7] Here, by agreement signed by the parties, they have consented to an additional provision about the termination or exit of Mr Small from the employment, on the terms as expressed in their settlement.

[8] Even if not by compliance, the agreement would have been enforceable by a claim for damages (quantified as \$3,500) as the remedy for breach of contract available under s 162 of the Employment Relations Act. Injunction is another remedy available from the Authority by which payment to Mr Small under the terms of the settlement agreement could have been enforced.

[9] This compliance order is enforceable in the Employment Court under s 140 of the Act.

A Dumbleton
Member of the Employment Relations Authority