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Smith v Masterprint Ltd WA 92/07 (Wellington) [2007] NZERA 555 (8 June 2007)

Last Updated: 16 November 2021

Under the [Employment Relations Act 2000](#)

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

Determination Number: WA 92/07

File Number 5082108

BETWEEN NEIL SMITH Applicant

AND MASTERPRINT LIMITED Respondent

Member of Authority: G J Wood

Representatives: Tony Wilton for Applicant

No appearance for or on behalf of Respondent

Investigation Meeting: 7 June 2007 at New Plymouth

Determination: 8 June 2007

DETERMINATION OF THE AUTHORITY

[1] This is an application for a compliance order by the applicant, Mr Neil Smith, against the respondent (Masterprint). In my substantive determination I found that Mr Smith was unjustifiably dismissed and ordered that he be paid \$6,500 in compensation and \$4,992 gross in lost remuneration. The parties later agreed that Masterprint would pay \$1,500 in costs to the New Zealand Engineering Printing and Manufacturing Union (the EPMU), Mr Smith's union.

[2] I am satisfied that despite many requests, Masterprint has failed to pay the monies owed to Mr Smith and agreed to be paid to the union. Once this matter was filed with the Authority, however, Masterprint did pay the \$4,992 gross in lost remuneration.

[3] The parties were unable to come to any agreement on any future payments, despite assistance proffered by the Authority. After several attempts at involving Masterprint in the investigation process, its Managing Director, Mr Lawrence Barclay, indicated on the morning of the investigation meeting that Masterprint would not attend or be represented. I therefore determined to

2

act as fully in the matter as if Masterprint had duly attended or been represented, as its failure to attend or be represented was clearly without good cause.

[4] I am satisfied that a major reason why Masterprint has not paid the \$8,000 outstanding from the Authority's determination is because of its difficult financial position, about which some evidence was given in the substantive investigation meeting. Mr Wilton, on behalf of Mr Smith and the EPMU, made it clear at this investigation meeting that they did not want to have to put Masterprint into liquidation. They therefore suggested (again) that the Authority could order the sums owing to be made in four monthly payments (of \$1,625 to Mr Smith and \$375 to the EPMU).

[5] I agree that this is a positive approach to ensuring that Mr Smith and the EPMU are paid, while also providing that Masterprint may be able to continue its operations. I therefore order the respondent, Masterprint Limited, to pay four

monthly instalments of \$2,000 (being \$1,625 to Mr Smith and \$375 to the New Zealand Engineering Printing and Manufacturing Union) commencing on or before 7 July 2007 and concluding on or before 7 October 2007, to resolve this employment relationship problem.

[6] I further order that a failure by Masterprint Limited to meet any of the payments on time constitutes a fundamental breach of this Order, allowing Mr Smith to apply to the Employment Court for the exercise of its powers under [s.140\(6\)](#) of the Act. For Masterprint's benefit, I note in particular that the Court has wide powers under [s.140\(6\)](#), including the ability to order that the property of any person in default be sequestered and that a fine not exceeding \$40,000 be ordered.

[7] Given the circumstances, Mr Smith made no application for costs.

G J Wood

Member of the Employment Relations Authority

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