

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 471  
3240839

BETWEEN CHUN KIT SZE  
Applicant

AND KNCC LIMITED  
Respondent

Member of Authority: Rachel Larmer

Representatives: Simon Greening and Erin Drew, counsel for the  
Applicant  
No appearance by the Respondent

Investigation: On the papers

Information received: 22 August 2023 from the Applicant

Date of Determination: 23 August 2023

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

*Previous determinations*

[1] The Authority has recently issued two determinations in Mr Sze’s favour:

- (a) *Chun Kit Sze v KNCC Limited* (“the substantive determination”)<sup>1</sup>; and
- (b) *Chun Kit Sze v KNCC Limited* (“the costs determination”).<sup>2</sup>

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<sup>1</sup> [2023] NZERA 242.

<sup>2</sup> [2023] NZERA 315.

*Substantive determination*

[2] In the substantive determination, Mr Sze was awarded a total of \$35,197.25 plus unquantified interest as follows:

- (a) \$3,113.91 wage arrears;
- (b) Interest on his wage arrears which was to run from 23 July 2022 until it had been repaid in full, to be calculated in accordance with the Interest on Moneys Claims Act 2016, using the civil debt calculator on the Ministry of Justice website;
- (c) \$12,083.34 gross lost remuneration;
- (d) \$15,000 distress compensation; and
- (e) \$5,000 contractual damages.

[3] KNCC Limited (“KNCC”) was ordered to pay Mr Sze \$35,197.25, plus the interest he had been awarded, within 28 days of the date of the substantive determination, which was dated 15 May 2023.

*Costs determination*

[4] Mr Sze was awarded \$3,071.56, which KNCC was ordered to pay him within 28 days of the date of the costs determination, being 16 June 2023.

*Compliance order sought*

[5] Mr Sze sought a compliance order from the Authority that ordered the Respondent to immediately pay him:

- (a) The remedies and interest awarded in the substantive determination;
- (b) The costs and disbursements awarded in the costs determination; and
- (c) Interest on the money he was previously awarded, pursuant to Schedule 2, clause 11 of the Employment Relations Act 2000 (“the Act”).

[6] Mr Sze also sought costs associated with this application and reimbursement of his filing fee.

*Non-engagement by Respondent*

[7] The Respondent has not engaged in the Authority's investigation.

**The Authority's investigation***Service of Statement of Problem*

[8] The Statement of Problem was served via email on the Respondent's former counsel on 25 July 2023, after they confirmed in writing that they were authorised to accept service of it. This counsel withdrew on 10 August 2023, citing a lack of instructions.

[9] The Respondent's Statement in Reply was therefore due by 8 August 2023. However, no Statement in Reply was lodged.

*Directions of the Authority*

[10] The Authority issued directions on 14 August 2023, which advised the Respondent that it needed to seek leave to file a Statement in Reply out of time if it wanted to defend Mr Sze's claims. The process for doing that was set out in the Directions of the Authority ("DoA") dated 14 August 2023.

[11] The Respondent was advised that any leave application had to be lodged by no later than 12 pm on 22 August 2023. Nothing has been received from KNCC.

[12] The Authority also noted that while it was preferable for it to hear from both parties before it issued a determination, the Respondent's failure to engage in the Authority's investigation process would not stop the compliance order application from being determined.

*Directions emailed to Respondent*

[13] An Authority Officer also contacted the Respondent via emails provided by its former counsel and via a phone number listed for Mr Jaeho Heo.

[14] The Authority Officer spoke to someone (who was possibly named "Ben") who said he was currently in a meeting with Mr Heo. The Authority Officer was asked to email Mr Heo at the Gmail address provided, which then occurred.

*Additional service by process server*

[15] The Authority engaged a process server to serve another copy of the Statement of Problem and the DoA dated 14 August 2023 (“*the service documents*”) on the Respondent at its registered address for service, as recorded on the Companies Register.

[16] That occurred on 17 August 2023, with the process server taping a copy of the service documents to the door of the vacant office where the registered address for service was located. The process server took a photo with the number on the door.

[17] The process server reported to the Authority that before he taped the service documents to the door he had spoken to other tenants to establish which office KNCC had used. Those present confirmed he had located the correct office door, which he then taped the service documents to and photographed them in situ.

*‘On the papers’ investigation*

[18] The DoA dated 14 August 2023 recorded that this matter would be investigated ‘on the papers’.

[19] The Applicant was given until 12 pm on 22 August 2023 to lodge an affidavit in support of his compliance order application, and he was also asked to address costs when doing so.

*Applicant’s evidence*

[20] Mr Sze lodged an affidavit on 22 August 2023 in support of his claims.

[21] A copy of this affidavit was sent to the Gmail email address that the Authority Officer had been told to contact Mr Heo on.

*Respondent’s evidence*

[22] The Respondent was informed in the DoA dated 14 August 2023 that if it was granted to lodge a Statement of Reply out of time, then it would have an opportunity to lodge any evidence or submissions it wanted the Authority to consider regarding the Applicant’s claims by 12 pm on 28 August 2023.

[23] However, leave was not granted because no leave application was made, so the proposed timetable for the Respondent to lodge evidence or submissions did not apply. The Respondent has therefore not engaged at all in the Authority’s investigation.

**Material facts***Amounts awarded*

[24] The Authority has ordered KNCC to pay Mr Sze:

- (a) \$35,197.25, plus unquantified interest to be calculated using the civil debt calculator on the Ministry of Justice's website, by 12 June 2023; and
- (b) \$3,071.56 by 14 July 2023.

*Attempts by Mr Sze to engage with KNCC*

[25] Mr Sze said his lawyer provided KNCC's then counsel with a copy of the substantive determination and his bank details. KNCC's then counsel confirmed the same day that this information had been passed on to KNCC.

[26] KNCC's then counsel also subsequently confirmed to Mr Sze's counsel that his costs memorandum had been passed on to KNCC. A copy of the costs determination was provided to KNCC's then counsel on 16 June 2023 and a request for payment of the money awarded in both determinations was made.

[27] KNCC's then counsel confirmed that KNCC had received copies of the Authority's two determinations, but advised that they did not have instructions regarding payment to Mr Sze of the money he had been awarded.

[28] Mr Sze deposed that KNCC has not responded to him or communicated with him, or his lawyer, about paying him the money he is owed.

*No payments made*

[29] Mr Sze said that no challenges have been lodged with the Employment Court, and KNCC has not sought clarification or an extension of time to pay him the money it owes him.

[30] Mr Sze in his affidavit also confirmed that no money has been paid. No evidence was produced by KNCC to the Authority that disputed Mr Sze's evidence that he has not been paid anything.

*Interest on wage arrears*

[31] Mr Sze in his affidavit set out the interest he sought. He had calculated the interest he claimed in his compliance order application from 13 June 2023, being the day after the 28-day payment timeframe from the substantive determination had lapsed.

[32] Mr Sze said there were 70 days between 13 June 2023 and 22 August 2023, being the date his affidavit was lodged with the Authority. Mr Sze said he used the civil debt calculator on the Ministry of Justice website to calculate the interest he said he is owed, as follows:

- (a) \$98.31 interest on the amount of \$3,113.91 he was awarded from 23 July 2022 to 12 June 2023 (being 28 days after the date of the substantive determination);
- (b) \$31.71 interest on the amount of \$3,212.22 (inclusive of the interest under (a) above, calculated for the period 13 June 2023 to 22 August 2023 (being the date of his affidavit); and
- (c) \$0.43 per day for each day after 22 August 2023 that the outstanding wages are not paid.

*Interest on lost remuneration*

[33] Mr Sze sought interest of \$119.30 on the \$12,083.34 lost remuneration he was awarded in the substantive determination for the period 13 June 2023 to 22 August 2023, and an additional \$1.70 per day for each day after 22 August 2023 the lost remuneration was not paid.

*Interest on distress compensation*

[34] Mr Sze sought interest of \$148.10 on the \$15,000 of distress compensation he was awarded for the period 13 June 2023 to 22 August 2023, and an additional \$2.12 per day for each subsequent day the amount remains unpaid.

*Interest on contractual damages*

[35] Mr Sze sought interest of \$49.37 on his award of \$5,000 contractual damages, calculated for the period 13 June 2023 to 22 August 2023 plus an additional \$0.71 per day thereafter that this amount remained outstanding.

*Costs sought*

[36] Mr Sze sought a contribution towards his actually incurred legal costs of \$2,250 for following up on payment and lodging this compliance order application and affidavit along with reimbursement of \$71.55 for his filing fee.

**The issues**

[37] The following issues are to be determined:

- (a) Has Mr Sze been paid any of the money he was awarded by the Authority?
- (b) If not, what is he still owed?
- (c) Should a compliance order be issued?
- (d) Should interest be awarded?
- (e) What costs and disbursements should be awarded?

**Has the Applicant been paid any of the money he has been awarded?**

[38] Mr Sze's uncontested evidence, that he has not been paid any of the money he was awarded in either the substantive or costs determinations, was accepted.

**What is the Applicant owed?**

[39] Mr Sze is owed a total of \$35,197.25, plus unquantified interest, under the substantive determination and \$3,071.56 under the costs determination.

**Should a compliance order be issued?**

[40] Section 137 of the Act gives the Authority the discretion to make a compliance order in a range of different situations, including regarding any determination it has issued that has not been complied with.

[41] Given the Respondent has not made any attempt to pay Mr Sze the money he has been awarded and in light of its failure to participate in the Authority's investigation, it was unlikely it would pay Mr Sze any of the money he is owed, unless a compliance order was issued.

[42] In the absence of any evidence that KNCC Limited will voluntarily pay Mr Sze the money he is owed, the issuing of a compliance order is appropriate and necessary.

**What are the terms of the compliance order?**

[43] Within 14 days of the date of this determination, KNCC is ordered to comply with:

- (a) Paragraph [110] of the substantive determination dated 15 May 2023, by paying Mr Sze \$35,197.25 plus the interest he was awarded in that determination on his wage arrears to run from 23 July 2022 until that amount has been paid in full; and
- (b) Paragraph [17] of the costs determination dated 16 June 2023, by paying him \$3,071.56.

**Warnings about breaches of this compliance order**

[44] If KNCC fails to comply with this compliance order, Mr Sze may apply under s 138(6) of the Act to the Employment Court for an exercise of its powers under s 140(6) of the Act.

[45] The Employment Court's powers under s 140(6) of the Act include power to order (among other things) imprisonment for a period not exceeding three months, a fine up to a maximum of \$40,000 be imposed or order that property be sequestered.

[46] Any breach of the Authority's compliance order must therefore be pursued by Mr Sze in the Employment Court.

**Should interest be awarded?**

[47] Mr Sze has been deprived of the use of money that he is owed. It is therefore appropriate that interest runs on the various amounts that he has been awarded until the entire amount, including interest, has been repaid to him in full.

[48] Interest is awarded pursuant to clause 11 of Schedule 2 of the Act. It is to be quantified in accordance with the Interest on Money Claims Act 2016, with the amount of interest to be calculated using the civil debt calculator on the Ministry of Justice website.

**What costs should be awarded?**

[49] Mr Sze as the successful party is entitled to an award of costs and reimbursement of his filing fee. This matter will be treated as involving a half a day of investigation meeting time.

[50] Accordingly, KNCC is ordered to pay \$2,250 towards Mr Sze's actual costs plus \$71.55 to reimburse his filing fee in respect of this compliance order application.

**Orders**

[51] Within 14 days of the date of this determination, KNCC Limited is ordered to comply with the Authority's substantive and costs determinations by paying Mr Size:

- (a) \$35,197.25, awarded to him in the substantive determination;
- (b) \$446.79 interest on the amounts awarded in the substantive determination from 13 June to 22 August 2023 (as per the calculations in his affidavit); and
- (c) \$3,071.56 awarded to him in the costs determination.

[52] In addition, KNCC is ordered to pay Mr Size:

- (a) Interest on the outstanding amounts he is owed from the date of this determination (being 23 August 2023) until the amounts the Authority has awarded him (including all interest) have been paid to him in full;
- (b) \$2,250 contribution towards his actual legal costs; and
- (c) \$71.55 to reimburse his filing fee.

[53] The interest awarded in paragraph [52](a) is to be quantified under the Interest on Money Claims Act 2016, with the amount of interest to be calculated using the civil debt calculator on the Ministry of Justice website.

Rachel Larmer  
Member of the Employment Relations Authority