

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2012] NZERA Auckland 284
5385246**

BETWEEN RANGI TE ANINI
 Applicant

AND MILLS ROAD FREIGHT
 LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Danny Gelb, Advocate for Applicant
 Anthony Vlatkovich, Counsel for Respondent

Investigation Meeting: 21 August 2012

Determination: 21 August 2012

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] The Applicant, Mr Rangi Te Anini, has applied to the Authority under s 137 of the Employment Relations Act 2000 (“the Act”) for an order requiring the Respondent, Mills Road Freight Limited (MRF) to comply with consent determination [2012] NZERA Auckland 148 which was issued on 1 May 2012.

[2] In that determination the parties had consented to settle their employment relationship problem by MRF paying Mr Te Anini the sum of:

- a. \$4,465.00 in respect of 19 days outstanding annual leave entitlement
- b. \$47.00 in respect of outstanding statutory holiday entitlement remuneration.
- c. \$225.60 in respect of interest on these amounts
- d. \$71.56 in respect of the filing fee

[3] On 15 June 2012 Mr Te Anini applied to the Authority for a compliance order, claiming that MRF had not paid him in full the monies he was entitled to under the

determination. Mr Te Anini additionally sought an order for the payment of a penalty by MRF.

Compliance Order

[4] I am satisfied that MRF has not fully complied with the terms of the Authority's determination of 1 May 2012.

[5] Mr Carl Mills, Director of MRF, explained the reasons for not having made the payment in full as attributable to the poor financial situation of MRF and had produced financial information in support of this submission.

[6] Mr Mills stated that MRF was, and remained, willing to make payment to Mr Te Anini of the outstanding amount, however in the circumstances, MRF sought time to make the payments by means of instalment.

[7] Mr Te Anini agreed with the proposal that an order for compliance by MRF be made by means of instalments, however he noted that since the determination of 1 May 2012 had been issued, he had incurred additional costs through having appointed professional representation and having paid an additional filing fee to the Authority. It was also noted by Mr Te Anini that interest had been increasing in accordance with the non-payment of the outstanding amounts due to him.

[8] I am satisfied that MRF has not complied with the terms of the Authority's determination of 1 May 2012. It is just in the circumstances for an order to be made requiring MRF to comply with the determination, and to pay a contribution towards the additional costs incurred by Mr Te Anini in seeking compliance with the terms of determination of 1 May 2012.

[9] Accordingly those payments are to be made as follows. MRF is ordered to pay Mr Te Anini:

- i. The sum of \$850.00 on or before 12 September 2012.
- ii. The sum of \$850.00 on or before 12 October 2012.
- iii. The sum of \$850.00 on or before 12 November 2012.
- iv. The sum of \$850.00 on or before 12 December 2012.

v. The sum of \$850.00 on or before 12 January 2013.

vi. The sum of \$850.00 on or before 12 February 2013.

[10] Compliance with the schedule of payments will be a full and final settlement of all outstanding matters between the parties.

[11] There will be no order for a penalty against MRF.

[12] For the information of MRF, failure to comply with an order such as this one made by the Authority under s 137 of the Act may provide a basis for an application to be made by Mr Watson to the Employment Court for enforcement of the order. Under s140 of the Act, where the Court is satisfied that any person has failed to comply with a compliance order made under s137, the Court may order remedies, including a fine not exceeding \$40,000 and/or the seizure of property and for the proceeds of sale to be distributed to the person enforcing the Authority's order.

Costs

[13] The issue of costs has been addressed in the schedule of payments ordered and set out at paragraph [9].

Eleanor Robinson
Member of the Employment Relations Authority