

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 30
3334380

BETWEEN	DANNIEL TAPION Applicant
AND	CONSTELLATION DRIVE LIMITED Respondent

Member of Authority: Robin Arthur

Representatives: Emma Brankin, advocate for the Applicant
Lou Buxton, director for the Respondent

Investigation: By telephone conference on 17 January 2025

Date: 22 January 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In September 2024 Danniell Tapion and Constellation Drive Limited (CDL) resolved an employment relationship problem on terms recorded in a Record of Settlement. An Employment Mediation Services mediator then certified their settlement agreement under s 149 of the Employment Relations Act 2000 (the Act).

[2] The certification process includes the mediator confirming with the parties that they understand the terms are final, binding and enforceable and cannot be brought before the Authority except for enforcement purposes.

[3] Danniell Tapion applied to the Authority for a compliance order because CDL had not made payments set in two terms of their agreement. Although the agreement included a confidentiality clause, it was necessary for this determination to refer to details of those terms.

[4] CDL had agreed to pay Danniell Tapion an amount of compensation in six instalments of an equal amount, starting on 1 October 2024 and ending on 1 March 2025. It also agreed to pay directly to Danniell Tapion's advocate a separate amount for the costs of representation within seven days. A further clause said that if any of the agreed payments were "missed, the entire amount falls immediately due".

[5] At the time of the application to the Authority in late October 2024 CDL had not paid the October instalment or the agreed costs amount.

[6] CDL did not lodge a statement in reply by the required time. In response to inquiries from the Authority, CDL's director Lou Buxton, by email on 13 January 2025, said the company had paid two instalments (one in November and one December) and would pay another instalment and "continue with payments as normal trading continues". He said the delay in payment was due to staff leaving and "difficult trading conditions" in the holiday period.

Investigation

[7] Mr Buxton and Daniel Tapion's advocate attended a case management conference by telephone on 17 January 2025.

[8] During the conference call I directed that Mr Buxton be removed as a respondent to the application. The settlement agreement as signed by the parties and certified by the mediator did not include a term making Mr Buxton, in a personal capacity, jointly and severally liable for the amounts owed by CDL.

[9] Mr Buxton again described financial difficulties faced by CDL and proposed, in effect, that the Authority amend the parties' settlement agreement by extending the time for payments of instalments to future dates as trading allowed. I declined to adopt that proposal because the terms of the agreement were final and binding under s 149 of the Act, an arrangement for instalments had previously been set but not kept, and Danniell Tampion did not agree to the proposed compromise of those terms.

[10] After further discussion the conference call adjourned on the basis that Danniell Tampion's application would be withdrawn if, by 21 January 2025, CDL paid the full amounts and reimbursed the \$71.55 fee paid for lodging the application. If that deadline was not met, a second outcome was foreshadowed – that the orders for compliance sought would be made, with an award for costs.

[11] On the morning of 22 January 2025 Daniell Tampion's advocate advised the Authority that the amounts due for the remaining three instalments and costs had not been paid. Accordingly, the orders for compliance set out below are now made.

Compliance order

[12] Under s 137 of the Act, CDL is ordered to, by no later than 5 February 2025, comply with the terms of its settlement agreement with Danniell Tapion by paying \$1,500 to Danniell Tapion and \$1,725 (including GST) to Mathews Walker Limited.

Costs

[13] CDL must also, by no later than 5 February 2025, pay a further sum of \$571.55 to Danniell Tapion as a contribution to costs of representation and expenses incurred in making this application for compliance with a settlement agreement.

Robin Arthur
Member of the Employment Relations Authority