

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 388/10  
5311630

BETWEEN TELECOM NEW ZEALAND  
LIMITED  
Applicant

AND PAUL EVANS-MCLEOD  
Respondent

Member of Authority: Vicki Campbell

Investigation: On the Papers

Submissions received: 6 August 2010 from Applicant  
10 August 2010 from Respondent

Determination: 26 August 2010

---

**DETERMINATION OF THE AUTHORITY**

---

[1] Telecom New Zealand Limited (“Telecom”) makes application for a compliance order against the respondent Mr Paul Evans-McLeod. Compliance is sought with the Authority’s Determination numbered AA 187A/10 dated 1 June 2010 (“the determination”).

[2] Telecom was awarded costs in the sum of \$1500 plus disbursements of \$401.48. The full payment of the costs award has not been paid by Mr Evans-McLeod who has, instead, been paying Telecom incremental amounts each week up to \$10.00 per week.

[3] Parties who take claims to the Authority or the Court do so with the risk that if they are not successful there may be financial consequences in that the unsuccessful party may have to contribute to the costs of the successful party.

[4] Mr Evans-McLeod says he is complying with the determination albeit slowly. Mr Evans-McLeod is not currently in paid employment and is in receipt of a

WINZ benefit. He has provided a copy of his weekly budget for the assistance of the Authority. I have some sympathy for Mr Evans-McLeod's financial position, however, costs are payable in their entirety.

[5] Telecom seeks an order from the Authority that Mr Evans-McLeod materially increases his weekly instalments and that Mr Evans-McLeod be required to notify Telecom if he resumes his employment, until such time as the costs award is paid in full.

[6] The Authority does not have jurisdiction to make such orders with respect to unsuccessful applicants. Section 138(4A) provides the Authority with the discretion to make an order that payments to an employee may be made by instalments, however, this can only be done if the financial position of the employer requires it.

[7] This case is not about an employer seeking relief to make payments by instalment and the Act does not provide the Authority with the discretion to order instalments of payments for impecunious unsuccessful applicants.

[8] In coming to my conclusions in this matter I have also taken into account the fact that continuing defiance of the Authority's orders places Mr Evans-McLeod at peril of serious consequences. The Authority's orders may be the subject of a further application for compliance in the Employment Court which is empowered to impose penalties for continuing non-compliance which include imprisonment, fines and the sequestration of property.

[9] It seems to me that Telecom is not averse to Mr Evans-McLeod paying the costs determination by instalment. **Therefore the parties are ordered to attend mediation within the next 28 days to resolve the matter of the quantum and timing of any incremental payments to be made.**

[10] Should mediation fail in assisting the parties to reach an agreement as to the amount and timing of any instalments, leave is reserved for Telecom to return to the Authority for an order requiring Mr Evans-McLeod to pay the costs award in full.

**Costs**

[11] Costs relating to this application shall lie where they fall.

Vicki Campbell  
Member of Employment Relations Authority