

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 45
5450060

BETWEEN LEROY THOMPSON
 Applicant

A N D GENESIS
 COMMUNICATIONS
 LIMITED
 Respondent

Member of Authority: T G Tetitaha

Representatives: F Ashton, Counsel for the Applicant
 J Douglas, Counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 17 December 2014 from the Applicant

Date of Determination: 12 February 2015

DETERMINATION OF THE AUTHORITY

- A. The application for compliance order is to proceed on notice.**
- B. The parties are directed to mediation.**
- C. Costs are reserved.**

Employment Relationship Problem

[1] This is a without notice application for a compliance order in respect of a record of settlement dated 4 November 2014. The only payment outstanding is a contribution to the lawyer's fees of \$3,200 plus GST.

Without Notice Applications

[2] The applicant does not address the legal tests for applications on a without notice basis. He refers to fulfilment of any conditions under the settlement agreement and the payment being due and owing for over 43 days.

[3] There is no express power for the Authority to make a compliance order without notice to the respondent. To justify the making of compliance orders it is not enough that there has been non-compliance or non-observance of an employment agreement or some relevant statutory provision.¹ Once the threshold has been crossed, the Authority has the discretion to make a compliance order or to refuse to make it or to adjourn the matter, without imposing any penalty or making a final determination, to enable the compliance order to be complied with while the matter is adjourned.²

[4] The exercise of the Authority's discretion must take into account the mandatory considerations under s157 of the Employment Relations Act 2000. Those considerations include compliance with the principles of natural justice (s157(2)(a). An ex-parte application is the anti-thesis of natural justice unless the Authority is required to act promptly to preserve a party's position.³

[5] The fact money may be due and owing does not meet the requirements for the making of a compliance order without notice.

[6] The application is to proceed on notice. The parties are directed to mediation.

[7] Costs are reserved.

T G Tetitaha
Member of the Employment Relations Authority

¹ *United Food & Chemical Workers Union of NZ v Talley* [1992] 1 ERNZ 756

² Section 138(5) Employment Relations Act 2000

³ *Metargem v Employment Relations Authority* [2003] 2 ERNZ 186