

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 25
3039031

BETWEEN JOY THOMPSON
Applicant

AND PHOENIX PUBLISHING
LIMITED
Respondent

Member of Authority: TG Tetitaha
Representatives: J Thompson in person
B Rawson, Director for Respondent
Investigation Meeting: By telephone
Submissions Received: 21 January 2019 from the Applicant
Record of Oral Determination: 21 January 2019

ORAL DETERMINATION OF THE AUTHORITY

**A. I order Phoenix Publishing Limited to comply with the following orders within
14 days of this determination:**

- a) **Phoenix Publishing Limited to pay the sum of \$5,000 to Joy Thompson for hurt and humiliation pursuant to s 123(1)(c)(1) of the Employment Relations Act 2000.**
- b) **Phoenix Publishing Limited to pay Joy Thompson \$4,383.52 net of wage arrears including holiday pay pursuant to s 131 of the Employment Relations Act 2000 by 19 July 2018.**
- c) **The payment of interest on the above wage arrears only at the rate of 5% payable from 7 September 2017 continuing until the date of payment.**

Employment Relationship Problem

[1] Joy Thompson seeks compliance orders and penalties against the Phoenix Publishing Limited. She obtained judgment against the respondent for an unjustified dismissal and unpaid wages. Phoenix Publishing was ordered to pay Ms Thompson hurt and humiliation of \$5,000 and wage arrears of \$4,383.52¹. Interest was also awarded.

Compliance Order

[2] Ms Thompson was successful in proving she had a personal grievance and that she had wage arrears owed. An Oral Determination was given on 12 July 2018.

[3] The Determination was served upon Phoenix Publishing Limited on 13 July 2018 at the email address for service it had provided to the Authority. No appeal was filed in respect of the Determination.

[4] There is no dispute Phoenix Publishing Limited has failed to pay any of the above sums ordered.

[5] Ms Thompson filed an application seeking compliance orders and penalties. This application was served upon Phoenix Publishing Limited at its registered address on 4 December 2018 by courier post. The package was signed for by Phoenix Publishing Limited. No steps have been taken by Phoenix Publishing to defend the application.

[6] The Registry sent the Notice of Hearing to Phoenix Publishing on 7 January 2019. The hearing was to be conducted by telephone today.

[7] An email was received from Phoenix Publishing Limited on 14 January 2019 at 6:00pm. It sought to be heard at today's hearing. It sent a telephone number for Ms Rawson to be contacted upon.

[8] Bronwyn Rawson, Phoenix Publishing Limited's director, appeared by telephone at the hearing. Ms Rawson sought an adjournment to seek legal advice. When asked why an adjournment was required she referred to having been served prior to the Christmas period but the papers may have blown away. This was untrue because the same papers were signed for as received by the company on 04 December 2018.

¹ *Joy Thompson v Phoenix Publishing Limited* [2018] NZERA Auckland 217.

[9] When I attempted to question her about the delays by the company seeking legal advice she referred to having changed legal advisors recently. She also made mention of ‘finding an employment contract’ for Ms Thompson. I informed Ms Rawson that the company had had an opportunity to argue the merits of Ms Thompson’s claim in July 2018 but took no steps. Therefore the late discovery of an employment agreement would not affect this application.

[10] Ms Rawson then stated the company would appeal the judgment. I again informed Ms Rawson that the company had had sufficient opportunity to appeal the Determination given it was served with it in July 2018 and had not taken any steps to appeal.

[11] Ms Rawson became overtly aggressive, accusing the Authority of being biased and there being some collusion by her former employees including the involvement of the National Business Review. She then hung up. Ms Thompson was quite upset by Ms Rawson’s behaviour during the conversation.

[12] I have some doubts the company would pursue an appeal at this late stage and even if it did that it would be successful given the delay of nearly 6 months. I am aware of another judgment the company appealed to the Employment Court then did not appear, resulting in the appeal being dismissed.²

[13] I am satisfied there are grounds to make a compliance order. I am also satisfied that there is no purpose in adjourning this matter as suggested by Ms Rawson or to direct the parties to mediation before issuing the compliance order.

[14] I order Phoenix Publishing Limited to comply with the following orders within 14 days of this determination:

- (a) Phoenix Publishing Limited to pay the sum of \$5,000 to Joy Thompson for hurt and humiliation pursuant to s 123(1)(c)(1) of the Employment Relations Act 2000.
- (b) Phoenix Publishing Limited to pay Joy Thompson \$4,383.52 net of wage arrears including holiday pay pursuant to s 131 of the Employment Relations Act 2000 by 19 July 2018.

² *Phoenix Publishing v McCallum* [2017] NZEmpC 129.

- (c) The payment of interest on the above wage arrears only at the rate of 5% payable from 7 September 2017 continuing until the date of payment.

[15] Costs are reserved.

Penalty

[16] The maximum penalty that may be awarded against Phoenix Publishing Limited is \$20,000 per breach. The applicable penalty here may be at or near to the maximum amount awarded.

[17] This is because Phoenix Publishing Limited has been before the Authority since 2016 on 9 occasions including two appearances for compliance orders and three appearances resulting in penalties up to \$10,000.³ Low level penalties have not deterred this employer. Any penalty imposed in respect of this matter is likely to be in excess of \$10,000 per breach.

[18] Given the potentially high amount of the penalty I intend adjourning the penalty application to allow Phoenix Publishing Limited to seek legal advice. Phoenix Publishing Limited has until **4 February 2019 3 pm** to file anything further in respect of the penalty application.

[19] If no further information is received, I will proceed to determine the penalty upon the papers.

TG Tetitaha
Member of the Employment Relations Authority

³ *Anderson v Phoenix Publishing Ltd* [2016] NZERA Auckland 373; *Bicknell v Phoenix Publishing Ltd* [2017] NZERA Auckland 42; *McCallum v Phoenix Publishing Ltd* [2017] NZERA Auckland 171; *Masjedi v Phoenix Publishing Ltd* [2018] NZERA Auckland 161; *Lennon v Phoenix Publishing Ltd* [2018] NZERA Wellington 48; *Cooper v Phoenix Publishing Limited* [2018] NZERA Auckland 301; *Lennon v Phoenix Publishing Limited* [2018] NZERA Wellington 87; *Cooper v Phoenix Publishing Limited* [2018] NZERA Auckland 328.