

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 272
5346909

BETWEEN GINNAYA TURNER
 Applicant

AND THE STONNE TRUST
 Respondent

Member of Authority: Robin Arthur

Representatives: Max Whitehead for the Applicant
 Peter Hill for the Respondent

Submissions: 9 June 2011 from Applicant and 9 and 17 June 2011
 from Respondent

Determination: 24 June 2011

DETERMINATION OF THE AUTHORITY

- A. Under s137 of the Employment Relations Act 2000 the Stonne Trust is ordered to comply within 28 days of the date of this determination with the orders made in Authority determination [2011] NZERA Auckland 192 for the payment of certain amounts to Ginnaya Turner.**
- B. The Stonne Trust must also pay Ms Turner a further \$500 in costs and reimburse her \$71.56 for the fee paid to lodge her application for a compliance order.**

[1] On 10 May 2011 the Authority ordered the Stonne Trust to pay Ginnaya Turner:

- (i) \$107,575 for unpaid salary with interest on that amount from 2 November 2010 until the date of payment; and

- (ii) a separate sum of \$22,421 as an interest payment the Stonne Trust had earlier agreed was due to her on that unpaid salary for the period up to April 2008; and
- (iii) \$70 in reimbursement of her application fee.

[2] On 9 June 2011 Ms Turner, through her representative, sought a compliance order on the grounds that the Stonne Trust had neither challenged nor complied with the orders made in Authority determination [2011] NZERA Auckland 192. She also sought a penalty, costs and reimbursement of her fee for lodging the compliance application.

[3] The Stonne Trust had the opportunity to appear or be represented before the compliance order was made.¹ By Minute of 15 June 2011 the Authority advised the parties that the application would be determined on the papers unless either party advised by 20 June that they wished to be heard in person or lodge written submissions. Neither party advised any objection to the matter being determined on the papers but Mr Hill did provide some additional information about the financial obligations of the Stonne Trust.

[4] By letter received by the Authority on 9 June 2011 Mr Hill stated the Stonne Trust and its corporate trustee, Blake Street Trustee Limited, had no assets and “*in fact have substantial debts with IRD at this time*”. In an accompanying email Mr Hill said the debt to Ms Turner referred to a “*previous entity and trustee*” and “*the Blake Street Trust as trustee has no control or interest over previous debts with the Stonne Trust under trustee of Stonne Limited*”.

[5] Mr Hill’s submission revives a contention which was not accepted for reasons given in the Authority’s earlier determination. At the time of Ms Turner’s employment by the Stonne Trust, its corporate trustee was a company called Stonne Limited which is now in liquidation. Before its liquidation Stonne Limited was removed as trustee and Blake Street Trustee Limited became the trustee of the Stonne Trust. The change of trustee did not change the liability of the Stonne Trust to pay Ms Turner her overdue wages and the other amounts since ordered by the Authority.

¹ Section 138(2) of the Employment Relations Act 2000.

[6] By email on 17 June 2011 Mr Hill provided a copy of an IRD account issued on 24 April 2011 showing the Stonne Trust owes \$74,384 for PAYE deductions due in December 2006 and penalties imposed since. An IRD account issued on 27 May 2011 showed the Stonne Trust owes \$75,135 for GST payments due in 2007 and 2008 and penalties imposed subsequently. Mr Hill submitted this confirmed the Stonne Trust has “*a lot of financial matters to sort out*” and “*clearly there are no surplus funds to assist Ginnaya [Turner] at this time*”.

[7] Contrary to Mr Hill’s submissions, I am satisfied the Authority should exercise its discretion to make the compliance order against the Stonne Trust sought by Ms Turner. While Mr Hill asserted the Stonne Trust was effectively in a hopeless financial state, there was no complete or comprehensive objective evidence about its actual financial position and assets provided for the earlier hearing or in response to this application. Ordering compliance may have the practical benefit of enabling Ms Turner to continue with the steps necessary to identify whether there are assets which could be used to meet the Trust’s obligations to her, whether that is by measures in the District Court under s141 of the Act or through further steps in the Employment Court under s138(6) and s140 of the Act.

[8] I was not satisfied imposition of a penalty was required in the present circumstances but Ms Turner should have an award of \$500 towards her costs and reimbursement of her fee for lodging the compliance application.

Robin Arthur
Member of the Employment Relations Authority