

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 1
3258940

BETWEEN

ULTIMATE SITEWORKS
LIMITED
Applicant

AND

CODY JOYCE
Respondent

Member of Authority: Eleanor Robinson

Representatives: David Fleming, counsel for the Applicant
Lawrence Anderson, advocate for the Respondent

Investigation Meeting On the papers

Determination: 4 January 2024

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] The Applicant, Ultimate Siteworks Limited (USL), has applied to the Authority under s 137 of the Employment Relations Act 2000 (the Act) for an order requiring the Respondent, Mr Cody Joyce, to comply with the terms of a determination given by the Authority (Determination [2023] NZERA 120).

[2] In the determination, which was issued on 8 March 2023, the Authority ordered Mr Joyce to pay USL the sum of \$5,750.00 as costs.

[3] On 25 October 2023 USL applied to the Authority for a Compliance Order, claiming that Mr Joyce had not paid it the amount ordered by the Authority as costs.

Note

[4] The parties agreed to the Authority determining this issue based on the Statement of Problem and the Statement in Reply, and on affidavits and submissions from the parties.

Relevant Facts

[5] On 8 March 2023 the Authority determined that Mr Joyce should pay a contribution of \$5,750.00 towards USL's costs.¹

[6] Although there was no time frame for the payment indicated in the Authority's determination, payment within a reasonable timeframe would be expected. An indication of the expectation of payment would be within the 28 days by which a challenge to the Authority's determination could be brought.²

[7] On 19 June 2023 USL wrote to Mr Joyce requesting payment of the Authority's costs award. Mr Joyce applied to the Employment Court for a stay on enforcement which was granted on the basis that Mr Joyce make payment into a bank account administered by the Court on or before 13 October 2023.

[8] Mr Joyce did not make payment by the due date and on 17 October 2023 the Court confirmed that the conditional stay had consequently lapsed and USL was entitled to pursue the debt due to it.

[9] The Authority directed the parties to attend mediation on this matter. Mediation took place during December 2023 but did not resolve the matter and both parties therefore filed submissions.

Compliance Orders.

[10] The Authority's power to grant compliance is discretionary. It is not an absolute discretion but one which is conditioned by the need to do justice to the parties according to the merits of the case.³

[11] Mr Joyce acknowledges that he is liable to pay the costs contribution to USL as ordered by the Authority but is seeking a lenient and fair repayment plan due to his circumstances.

[12] These circumstances include his challenge to the Authority's substantive determination which is before the Court and due to be heard 28 to 29 February 2024.

[13] Mr Joyce submits that he has saved \$2,000.00 towards the costs award and is willing to enter into an agreement with USL for payment of the remaining amount awarded.

¹ *Cody James v Ultimate Siteworks Limited* [2023] NZERA 120

² Employment Relations Act 2022 s 179(2)

³ *United Food and Chemical Workers Union of NZ v Talley* [1992] 1 ERNZ 756 at (4)

[14] USL submits that the costs award was made after the Authority had heard argument from both parties and to not order compliance would lead to an injustice.

[15] It is also submitted for USL that the conditional stay granted to Mr Joyce by the Court has now lapsed and allowing Mr Joyce to continue not to make payment would effectively give him the benefit of the unconditional stay that the Court declined to grant.

[16] I am satisfied that Mr Joyce has not complied with the terms of determination [2023] NZERA 120 dated 8 March 2023. Having considered all the circumstances, including that the Court granted Mr Joyce a conditional stay which lapsed, I find it is just in the circumstances for an order to be made requiring Mr Joyce to comply with the determination.

[17] I have considered Mr Joyce's submission that a payment by instalments agreement with USL should be granted.

[18] Section 1378(4A) of the Act gives the Authority the discretion to order payment by instalments but only: "if the financial position of the employer requires it." There is no corresponding discretion granted in the case of an employee, and I determine that USL is entitled to payment of the costs contribution awarded by the Authority in March last year.

[19] USL has applied for interest on the costs award to apply from 28 days after the date of determination [2023] NZERA 120. i.e. from 5 April 2023.

[20] I observe that in the interim period since the Authority's determination on costs was made, there have been applications and proceedings before the Court, including the granting of the conditional stay on costs.

[21] I therefore consider it appropriate to order interest from the date the conditional stay on the Authority's costs lapsed, i.e. 17 October 2023

[22] Mr Joyce is to pay interest at the rate prescribed in the Interest on Money Claims Act 2016 on the outstanding sums due to USL from 17 October 2023 the date of determination until the amounts owed are paid in full.

Filing Fee

[23] Mr Joyce is also to pay \$71.56 to USL the fee on the application for the Compliance Order.

Orders

[24] **Mr Joyce is ordered to pay USL the following amounts:**

- (i) **\$5,750.00 awarded by the Authority in Determination [2023] NZERA 120 within 14 days of the date of this determination;**
- (ii) **Interest on that amount to be calculated in compliance with Schedule 2 of the interest on Money Claims Act 2016 from 17 October 2023 until the costs are paid in full; and**
- (iii) **\$71.56 reimbursement of the filing fee.**

Costs

[25] This matter was determined on the papers, occupied a short investigation meeting and the costs are awarded in respect of this compliance application only.

[26] I order Mr Joyce to contribute \$750.00 towards USL's actual costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

Eleanor Robinson
Member of the Employment Relations Authority