

Attention is drawn to paragraph 5 of this determination, prohibiting publication of certain information.

Determination Number: CA 136/05  
File Number: CEA 186/05

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Jezamine Van der Sluys (Applicant)  
**AND** Taylors Bar Limited (Respondent)  
**REPRESENTATIVES** Mary Moorhead, Counsel for Applicant  
No appearance for Respondent  
**MEMBER OF AUTHORITY** Philip Cheyne  
**INVESTIGATION MEETING** 17 October 2005  
**DATE OF DETERMINATION** 20 October 2005

**DETERMINATION OF THE AUTHORITY**

***Employment relationship problem***

[1] Jezamine Van der Sluys is entitled to various remedies from her former employer as a result of her earlier proceedings in the Authority. After receiving that determination, she entered into an arrangement with the company for it to pay her \$50.00 weekly but subject to her right to enforce the whole of the earlier judgment. Ms Van der Sluys now seeks a compliance order to enforce the whole balance that is due to her after allowance for the money already paid.

***Respondent's non appearance***

[2] I am satisfied from the file that the respondent has been served with the notice of investigation meeting. Despite that, the respondent was not represented at the investigation meeting. That reflects the advice given to the Authority by Nathan Johnson on 20 September 2005, when he said that he had received the notice of meeting but would not be appearing at the investigation meeting. Mr Johnson is the respondent's director. He claimed that the IRD had been asked to put the company in liquidation. However, as at 17 October 2005, the company is not in liquidation.

[3] There being no good reason for the respondent's non appearance, I continued with the investigation meeting. Ms Van der Sluys gave evidence, all of which I accept. The material parts are set out below.

***Amount owing***

[4] In the original determination the Authority ordered the company to pay Ms Van der Sluys \$1,239.00 arrears of wages plus interest on that sum at 7% from 15 January 2003, distress compensation of \$5,000.00, and compensation for lost remuneration of \$324.00. Subsequently, the company was also ordered to pay Ms Van der Sluys \$2,050.00 in costs. That is a total of \$8,613.00, not including the interest component. Counsel for Ms Van der Sluys accepted that interest could be calculated from 15 January 2003 until 4 May 2004, the date a first payment was made to Ms Van der Sluys. Accordingly, interest amounts to \$113.11. The total owing under the two determinations is therefore \$8,726.11.

[5] Under the weekly payment arrangement, the company paid Ms Van der Sluys \$3,200.00. The last payment was made on 28 July 2005, about a month after the date these proceedings were lodged. I have been given copies of bank statements of the account of the parents of Ms Van der Sluys, where the payments were received. I make an order prohibiting from publication any of the financial information contained in those statements except the payments from the respondent.

[6] After deducting the amount already paid to Ms Van der Sluys, the respondent owes \$5,526.11.

***The position of the respondent***

[7] Ms Van der Sluys heard that business at the respondent's bar had improved so thought that the circumstances that originally caused her to accept payment by instalments had changed. Contact was made with Mr Johnson who confirmed that trading had improved but claimed that several significant creditors remained unpaid and any greater payment to Ms Van der Sluys would have to await the completion of restructuring. Some further contact between the parties in May did not resolve the matter. These proceedings were eventually lodged on 27 June 2005.

[8] The respondent did not lodge a reply until 4 August 2005. The reply gave some details about the respondent's financial position. However, those details were not supported by any documentation and the respondent did not attend the investigation meeting to give any evidence.

***Compliance order***

[9] In the ordinary course of events, a successful party is entitled to the proceeds of their claim. The respondent may be insolvent or it may be preferring other creditors to Ms Van der Sluys. Alternatively, it may just be avoiding its obligations. However, given its failure to attend the investigation meeting, that is all simply speculation. Section 137 (4A) of the Employment Relations Act 2000 empowers the Authority to order payment by instalments but only if the financial position of the employer requires it. I have no evidential basis on which to make any assessment of the respondent's financial position. Accordingly, Ms Van der Sluys is entitled to a compliance order requiring the whole of the balance to be paid to her.

[10] I make an order pursuant to section 137 of the Employment Relations Act 2000 requiring the respondent to comply with the orders of the Authority set out in determinations CA 4/04 dated 19 January 2004 and CA 4A/04 dated 2 April 2004 by paying to her the balance of the sum owing under those orders, being \$5,526.11. The respondent must obey this order within 28 days of the date that it is served with this determination.

[11] The Authority is to serve this determination on the respondent together with a copy of section 140 (6) of the Employment Relations Act 2000 which sets out the consequences of a failure to comply with this order.

***Further remedies***

[12] There is a claim for interest on the unpaid monies, commencing on 22 February 2005, the day that Ms Van der Sluys requested payment of the balance. Clause 11 of the 2<sup>nd</sup> schedule to the Employment Relations Act 2000 empowers the Authority to order the payment of interest in any matter involving the recovery of any money. The compliance order application in the present circumstances is such a matter. I order the respondent to pay interest at the rate of 9% commencing 22 February 2005 on the sum of \$5,526.11.

[13] There is also a claim for costs in relation to this compliance order application. I am told that counsel's costs are \$1,200.00 plus \$90.00 disbursements. This is not a case for a full indemnity for legal costs, but equally, Ms Van der Sluys should not have to bear any substantial difference between those legal costs and costs awarded against the respondent. Accordingly, I order the respondent to pay costs of \$1,000.00 plus disbursements of \$90.00.

Philip Cheyne  
Member of Employment Relations Authority