

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 585
3071732

BETWEEN WDT
 Applicant

AND JJP
 Respondent

Member of Authority: Vicki Campbell

Representatives: Shima Grice for Applicant
 Nicola Watkins for Respondent

Investigation Meeting: On the papers before the Authority

Determination: 11 October 2019

DETERMINATION OF THE AUTHORITY

- A. JJP is ordered to comply with the terms of settlement appended to the Consent Determination dated 25 March 2019 by paying the overdue instalments amounting to \$9,500 plus interest within 14 days of the date of this determination.**
- B. JPP is ordered to comply with the terms of settlement appended to the Consent Determination dated 25 March 2019 by continuing to pay \$500 each week until the full settlement sum has been paid starting in the week commencing 14 October 2019.**
- C. Costs are reserved.**

Employment relationship problem

[1] On 22 March 2019 the parties attended an investigation meeting. During the meeting the parties advised me they had reached agreement on all issues on a full and final basis.

[2] I issued a consent determination appending the agreed terms of settlement on 25 March 2019.¹

[3] WDT claims JJP has breached the consent determination of the Authority as it has failed to make the payments agreed to in the terms of settlement. In particular JJP was to make payments of \$500 each week commencing on 1 April 2019. WDT says that on 2 April JJP contacted him and advised that an automatic payment facility set up to make the payments had not been honoured due to insufficient funds.

[4] The first payment was received on 4 April 2019. Six further payments were made and after default by JJP, the parties agreed on 10 June that the payments could be reduced to \$100 each week. WDT agreed to this arrangement on the basis that he did not waive his rights under the agreement dated 22 March 2019 and reserved his rights to enforce compliance with the agreed terms including seeking payment of the difference between the \$100 and \$500 weekly instalments if any future payments were missed.

[5] Payments of \$100 were made between June and September. The final recorded payment received by WDT is dated 13 September 2019. No further instalments have been paid.

[6] WDT has applied to the Authority for compliance orders requiring JJP to pay the overdue instalments in one lump sum and to continue paying the subsequent instalments as agreed in the terms of settlement appended to the consent determination dated 25 March 2019.

Compliance Orders

[7] Under s 137(1)(b) of the Employment Relations Act 2000 the Authority has the power to order compliance with any order or determination of the Authority. I am

¹ *WDT v JJP* [2019] NZERA 176.

satisfied JJP has failed to comply with the agreements reached and appended to the Consent Determination dated 25 March 2019.

[8] From the records provided to the Authority I have established WDT is owed \$9,500 under the terms of settlement. This has been calculated on the following basis:

- a) 10 weeks not paid at \$500 per week equating to \$5,500; plus
- b) 10 weeks paid at the reduced amount of \$100 equating to \$4,000.

[9] JJP is ordered to comply with the terms of settlement appended to the Consent Determination dated 25 March 2019 by paying the overdue instalments amounting to \$9,500 within 14 days of the date of this determination.

[10] JJP is ordered to comply with the terms of settlement appended to the Consent Determination dated 25 March 2019 by continuing to pay \$500 each week until the full settlement sum has been paid starting in the week commencing 14 October 2019.

Interest

[11] WDT also seeks interest on the overdue amounts. The Authority has the power to award interest under clause 11 of the Second Schedule of the Act. Interest is to reimburse someone for the loss of use of monies to which there is an established entitlement.

[12] It is appropriate where a person has been deprived on the use of money to make an award for interest. JJP is ordered to calculate and pay interest within 14 days of the date of this determination on the sum of \$9,500.

[13] Interest is to be calculated from the date of this determination until it is paid.

[14] Interest is payable in accordance with Schedule 2 of the Interest on Money Claims Act 2016. A calculator to assist in the calculation of interest is available on the Ministry of Justice website.²

² www.justice.govt.nz/fines/civil-debt-interest-calculator

Further non-compliance

[15] The Authority's orders may be the subject of a further application for compliance in the Employment Court which is empowered to impose penalties for continuing non-compliance which include imprisonment, fines and the sequestration of property.

[16] An alternative procedure arises under s 141 of the Act enabling a party to bypass the compliance process by obtaining a certificate of determination from the Authority and filing it in the District Court so that it can be enforced using the remedies available under the District Courts Act 1947 and the District Court Rules 2014. Those remedies are more diverse and more effective than remedies which may be available in the Employment Court.³

[17] Pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000 WDT is to be provided with a certificate of determination, sealed with the seal of the Authority recording that within 14 days of the date of this determination, JJP is to pay WDT the sum of \$9,500 plus interest.

Costs

[18] Costs on this application are reserved.

Vicki Campbell
Member of the Employment Relations Authority

³ *Broeks v Ross* EmpC Auckland AC36A/09, 11 November 2009; *Denyer v Peter Reynolds Mechanical Limited trading as The Italian Job Service Centre* [2015] NZEmpC 41.