

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** Dion Vaughn Whittaker (Applicant)  
**AND** Les Baty Engineering Ltd (Respondent)  
**REPRESENTATIVES** Brenda Osborne for the Applicant  
Les Baty and Warren Jones for the Respondent  
**MEMBER OF AUTHORITY** P R Stapp  
**INVESTIGATION MEETING** Palmerston North, 9 February 2007  
**DATE OF DETERMINATION** 12 February 2007

**DETERMINATION OF THE AUTHORITY**

**Employment relationship problem**

[1] A signed Record of settlement between Mr Dion Whittaker and Les Baty Engineering Limited has been submitted to the Authority for enforcement by Mr Whittaker.

**Background**

[2] Dion Whittaker, the Applicant, and Les Baty on behalf of Les Baty Engineering Limited, signed off a settlement dated 5 September 2006. The same settlement was signed off by a mediator from the Department of Labour under s 149 of the Employment Relations Act 2000. The Respondent was required to make a compensatory payment to the Applicant of \$2,000 within seven days of the date of the settlement. No payment was received and attempts were made by the Applicant's representative to obtain payment for the Applicant. The payment remains outstanding.

[3] The parties did not attend mediation. As I must I considered mediation to resolve the matter. However I decided that it would not be constructive to direct the matter to mediation. This was because the Respondent had not filed a Statement in Reply as required. The Applicant had engaged the services of a Mediator from the Department of Labour for assistance to obtain payment without any success.

**Les Baty Engineering Limited**

[4] I am satisfied that Les Baty Engineering Limited was properly served with the Statement of Problem and the documents attached to it applying for the enforcement of the Record of Settlement. Mr Baty and Warren Jones, Mr Baty's support person, previously had made contact with the Authority's office in Wellington claiming that the Authority could not take any no further action on the matter because the Applicant had withdrawn the employment relationship problem upon settlement being reached and the use of the same filing number.

[5] Mr Baty's understanding of the situation is not correct. That Statement of Problem which was withdrawn related to an earlier employment relationship problem. That was withdrawn upon the parties reaching a settlement which was recorded by the Mediator from the Department of Labour.

[6] Also, the Applicant filed the current application with a filing fee of \$70. The Applicant says the Respondent has not honoured the terms of the settlement. In such a situation the Record of Settlement can be used for enforcement purposes.

[7] The Respondent did not file a Statement in Reply and did not apply in advance for leave to respond or reply. Mr Baty and Mr Jones attended the Authority's investigation meeting. Helpfully Mr Baty confirmed that he signed the settlement and had not paid the sum.

[8] The Applicant has referred to an issue he believes Mr Baty has taken issue with the settlement being reached and deciding not to pay. Mr Baty confirmed that he had issues about Mr Whittaker, and tabled a Statutory Declaration (from a third party) to support his concern. I ruled that the Statutory Declaration had little relevance to the enforcement proceedings. If there are genuine issues arising from the signing of the settlement proper action to contest the settlement should have been taken by the Respondent and in entirely separate proceedings. There had been no action taken at the time of the Authority's investigation meeting.

[9] It is agreed that the Record of Settlement has not been honoured. No payment has been made. The Record of Settlement can be used for enforcement purposes. The terms are final and binding: see s 149 (3) (a) of the Act. Also the terms are able to be enforced: see ss 149 (3) (b), 137 (1) (a) (iii) and s 151 of the Act. Thus the application is a new application brought to the Authority upon

entirely different grounds to the matter that the Applicant had earlier withdrawn despite the same numbering being used on the Authority's file.

### **Determination of the Matter**

[10] I am satisfied the parties signed off a settlement. Also I am satisfied that that settlement was signed off by a Mediator from the Department of Labour in a Record of Settlement dated 5 September 2006. Further, I am satisfied that the signed settlement signed off by the mediator is enforceable. The evidence before me is that Les Baty Engineering Limited has failed to honour the obligation signed off to pay the Applicant a compensatory sum of \$2,000 within 7 days of that settlement. There has been no adequate defence of the non payment in the face of the Record of Settlement. No adequate reasons for non-payment have been provided. I am satisfied that attempts have been made to get the payment without any success.

[11] Therefore, I have decided to resolve the matter by a compliance order to enforce the settlement. Under s 151 and s 137 I order Les Baty Engineering Limited to pay the sum of \$2,000 to Dion Whittaker. In accordance with s 137 (3) Les Baty Engineering Limited is to make the payment in full within 21 days of the date of receiving this determination and not later than 5 March 2007.

[12] The Applicant has been put to the unnecessary cost of bringing this matter. Reasonable costs amount to \$375 for the work undertaken in writing to present this matter before the Authority and the time required for representation at the Authority's investigation meeting. This is calculated on the basis of three hours work and representation at \$125 per hour upon considering actual costs of \$1,307 plus the \$70 filing fee. Les Baty Engineering Limited is to pay Dion Whittaker the sum of \$375 reasonable costs and also pay the \$70 filing fee.

[13] There has been no application for a penalty against the Respondent for breaching the terms of settlement that could have also been laid. There has been no claim for interest.

[14] Any failure to comply with a compliance order may leave the Respondent open to any action initiated by the Applicant under s 138 (6) of the Act and in the Employment Court with its powers to enforce compliance, or compliance in the District Court.

**Conclusion**

[15] Les Baty Engineering Limited is ordered to pay Dion Whittaker:

- The sum of \$2,000 in compliance of a Record of Settlement. Such a payment is to be paid in full within 21 days of the date of the receipt of this determination and not later than 5 March 2007.
- The sum of \$375 costs and \$70 filing fee.

P R Stapp  
Member of the Authority