

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2013] NZERA Auckland 126
5412521**

BETWEEN DANIEL JOHN STERLING
WILLIS
Applicant

A N D HAMILTON BRICKLAYERS
LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Applicant in person
David Burbage, Advocate for Respondent

Investigation Meeting: On the papers

Date of Determination: 12 April 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Willis), seeks compliance with a record of settlement signed in Hamilton on 27 November 2012, the terms of which were that the respondent (Hamilton Bricklayers) was to pay to Mr Willis a compensatory sum of \$2,500 on or before 4 December 2012. That payment not being received by the due date, Mr Willis issued his proceedings in the Authority claiming the compensatory amount of \$2,500 together with the filing fee and interest on the unpaid sum down to the date of payment.

[2] The statement in reply filed in the Authority indicates that the compensatory sum referred to in the record of settlement was paid on 6 March 2013 and that fact was confirmed to the Authority by Mr Willis.

[3] The statement in reply also identifies the reason for the delay as being a “*serious health incident*” afflicting Mr Burbage, the principal of Hamilton Bricklayers which meant that he has been unable to earn any income since 2 December 2012 and was relying on a judgment debt owed to him in order to satisfy his obligations to Mr Willis.

[4] The Authority convened a case management conference with the parties in order to discuss the disposition of this matter. Mr Willis indicated that notwithstanding the eventual receipt of his compensation, he still wished to persevere with his claim for interest and the Authority’s filing fee.

[5] Mr Burbage confirmed to the Authority that he had indicated during mediation that he was suffering from ill health but Mr Willis took the view that if he thought that would impact on his ability to pay within the timeline proposed, he should have changed the timeline.

[6] The Authority sought the comments of the parties as to how they wanted the matter dealt with. The Authority indicated that although the compensatory sum had been paid, Mr Willis had not withdrawn the balance of his claim and was therefore entitled to have it considered by the Authority. The parties agreed that the matter should be dealt with by the Authority on the papers.

Determination

[7] This is a matter where the Authority ought to consider the substantial justice of the case and exercise its discretion appropriately. Mr Willis has been paid the compensation he is owed, albeit some three months late. Mr Willis acknowledged that he knew that Mr Burbage was seriously unwell but he quite properly made the point that if Mr Burbage thought that illness would prevent him from fulfilling his obligations in terms of the record of settlement, he should have said so and extended the date.

[8] No doubt Mr Burbage would have been better to have done as Mr Willis suggested, but presumably he thought that he could comply within the terms of the agreement. He himself was relying on the payment of a judgment debt in order to be able to pay Mr Willis and there was a delay in payment of the money owed to him.

[9] Mr Burbage very honourably suggested during the telephone discussion with the Authority that he felt he ought to pay Mr Willis' filing fee in the Authority but understandably he made no concession in relation to the claim for interest.

[10] In all the circumstances, the Authority thinks that the only additional payment that Mr Burbage should be asked to make is the filing fee in the Authority. The Authority in such matters has a discretion and it is appropriate that the discretion be exercised having regard to the interests of justice. Here the fundamental payment required to be made from one to the other has been made, albeit three months' late. No doubt that has inconvenienced Mr Willis and certainly has required him to take the steps he has to enforce the payment by action in the Authority.

[11] But Mr Burbage has been seriously unwell and that fact was known to Mr Willis. The Authority thinks it appropriate to note that Mr Burbage has participated willingly in the Authority's process by filing a statement in reply and by engaging with the Authority and the other party in a telephone conference and has made, in addition, an appropriate concession.

[12] Given Mr Burbage's inability to work over the last several months and the fact that he is hoping that his health is now improving so that he can get back to his work again, the Authority thinks the appropriate course of action is to direct that Hamilton Bricklayers Limited is to pay to Mr Willis the sum of \$71.56 being the Authority's filing fee in this matter.

[13] Hamilton Bricklayers is urged to make this payment urgently in order to bring this matter to a conclusion.

James Crichton
Member of the Employment Relations Authority