

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 75
3094152

BETWEEN JUSTIN WILSON
Applicant

AND ACME PROJECTS LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
No appearance by the Respondent

Investigation Meeting: On the papers

Submissions and Further Information Received: 11 and 17 January and 7 March 2022 from Applicant

Date of Determination: 8 March 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Wilson has asked the Authority to issue a compliance order and award him costs regarding a Certificate of Determination that the Authority issued dated 5 February 2020 that recorded the respondent Acme Project Limited owes the applicant \$14,050.99 as a result of the awards made in his favour in the Authority's substantive determination dated 3 October 2019.¹

[2] The respondent has not paid any money to the applicant.

¹ *Wilson v Acme Projects Limited* [2019] NZERA 566.

No participation in Authority's investigation by respondent

[3] The respondent is aware of these proceedings but has elected not to engage in the Authority's investigation. The respondent was served with a copy of the statement of problem on 31 March 2020, and acknowledged service of it to the Authority. The statement in reply was due on 14 April 2020. No statement in reply has been filed.

[4] On its own initiative the Authority extended additional time for the respondent to seek leave to file a statement in reply out of time. The Authority's 11 November 2021 Minute set out the process the respondent needed to follow if it wanted to defend the applicant's claim for a compliance order and costs. No leave application was filed.

[5] The Authority notes that the respondent also failed to engage in the Authority's substantive investigation of the applicant's claims back in 2019.

Removal from Companies Register

[6] The Companies Office Registrar has issued a public notice that the respondent is going to be removed from the Companies Register. The applicant contacted the Companies Registrar about ensuring the respondent remains on the Companies Registrar while his claim is being determined and it appeared that unknown others have also taken steps to ensure the respondent remains registered for now.

Authority's Minutes

[7] The Authority refers to its Minute dated 11 November 2021 and 1 February 2022 that set out the background of this matter and which extended further opportunities to the respondent to participate in the Authority's investigation process.

[8] The 1 February 2022 Minute was served on the respondent at its registered address for service on 16 February 2022. This outlined the information obtained during the Authority's investigation, recorded the Authority's preliminary views on the merits of the claims and gave the respondent seven days from date of service of the Minute on it to provide any information it wanted taken into account.

[9] The respondent therefore had until 23 February 2022 to provide the Authority with any evidence or other information it wanted the Authority to consider before it issued this determination.

[10] The Authority indicated that the information the respondent could include, but was not limited to, evidence about its financial situation and ability to pay. However, the respondent failed to avail itself of any of these opportunities. No information was provided.

On the papers investigation

[11] Because there was no engagement from the respondent the Authority conducted an 'on the papers' investigation. This involved the applicant filing a witness statement dated 11 January 2022 and then affirming his evidence at 3:05pm on Monday 17 January 2022. That evidence was served on the respondent was given a reasonable opportunity to respond to it.

[12] This determination is based on the applicant's affirmed evidence and on the communications the respondent has had with the Authority. The respondent's communications were simply emails so, unlike the applicant's, they were not affirmed evidence.

Communications by the respondent

[13] Although the respondent did not file a statement in reply, and did not seek leave to file a statement in reply out of time, it has communicated with the Authority regarding this matter.

[14] On 28 August 2020 Mr Faud Anwar Ali, the sole director and shareholder of the respondent, advised the Authority that the respondent's contract with Vision Stream had been terminated and that an offer Mr Ali had made to the applicant to pay the amount owed at the rate of \$250 a week had not been accepted. Prior to that, in an email dated 1 April 2020, the respondent had referred to financial difficulties associated with the loss of contracts it had with Vision Stream and Chorus.

[15] The Authority Office has also had other email and telephone communications with Mr Ali, but these were focused on encouraging him to participate in the Authority's process, they were not about the but not about the substance of the applicant's claims.

Finding

[16] The Certificate of Determination issued by the Authority dated 5 February 2020 records that the respondent owes the applicant \$14,050.99. This has clearly been breached because the respondent has failed to pay the applicant any that amount.

[17] The Authority is satisfied that unless a compliance order is made, the respondent will not pay the applicant any of the money he is owed. A compliance order is therefore necessary and appropriate.

Compliance order and conditions

[18] The Authority issues the following compliance order:

- (a) The respondent is ordered to comply with the Certificate of Determination dated 5 February 2020 by paying the applicant the full amount of the \$14,050.99 he is owed (“*amount owing*”);
- (b) The respondent is ordered to pay the applicant the amount owing at the rate of \$250 per week, with the first payment being due within seven days from the date of this determination – i.e. on or before 15 March 2022 and again at least every seven days thereafter;
- (c) If the respondent defaults by missing any of the weekly instalments (“*the default*”), then the entire amount owing that is outstanding as at the date of the default becomes payable within seven days of the missed payment;
- (d) The respondent is ordered to pay interest on the full amount outstanding (currently \$14,050.99) from the date of the Authority’s substantive determination of 3 October 2019 until the applicant has received the full amount owing to him;
- (e) Interest is awarded under the Interest on Money Claims Act 2016 and is to be calculated in accordance with the civil debt interest calculator on the New Zealand Ministry of Justice website: <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>.

Costs and disbursements

[19] The applicant was initially represented by an advocate, so the Authority is satisfied he has actually incurred legal fees. This matter has been treated as a two hour investigation meeting for the purposes of assessing costs in accordance with the Authority’s usual notional daily tariff based approach to costs.

[20] The respondent is ordered to reimburse the applicant \$1,500 towards the actual legal costs he has incurred in connection with obtaining the respondent’s compliance with the

Authority's substantive determination. This represents two hours of the notional starting tariff of \$4,500, that has been adjusted pro rata (i.e. 2 x \$750).

[21] The respondent is also ordered to reimburse the applicant \$71.56.

[22] Within seven days of the date of this determination, i.e. on or before 15 March 2022, the respondent is ordered to reimburse the applicant \$1,571.56 towards his actual costs and disbursements.

[23] Failure of the respondent to pay the \$1,571.56 in full by 15 March 2022 means that amount will become due and owing to the applicant along with the amount owed in accordance with paragraph [18] of the compliance order that has been made in this determination.

Rachel Larmer
Member of the Employment Relations Authority