



New Zealand Employment Relations Authority Decisions

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Wood v Earlawn Limited (Christchurch) [2018] NZERA 1100; [2018] NZERA Christchurch 100 (17 July 2018)

Last Updated: 25 July 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2018] NZERA Christchurch 100

3031138

BETWEEN LARA WOOD Applicant

A N D EARLAWN LIMITED Respondent

Member of Authority: David Appleton

Representatives: Applicant in person

Brendon Soal, Advocate for Respondent

Investigation Meeting: Determined on the papers

Last Information

Received:

17 July 2018

Date of Determination: 17 July 2018

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms Wood seeks an order requiring the respondent to comply with the terms of a record of settlement entered into between them on 23 May 2018. The respondent does not deny that it breached the terms of the record of settlement, albeit in error, but seeks an order that it pay the remainder of the balance due to Ms Wood in instalments.

The events leading to the application

[2] The record of settlement was signed pursuant to s 149(1) of the Employment Relations Authority 2000 (the Act) by a mediator employed by the Chief Executive of the Ministry of Business, Innovation and Employment, and who certified to being so appointed, as required by the Act, and to holding a current authority to sign terms of agreement settling employment relationship problems. The mediator also certified to having explained the effects of ss 148A,

149(1) and (3) of the Act, that the parties had not foregone any minimum entitlements in entering into the settlement agreement, and that she was satisfied the effects of those sections had been understood.

[3] Accordingly, the record of settlement is enforceable in the Authority by compliance order under s 137, pursuant to s 151 of the Act.

[4] The material term of the record of settlement is as follows:

Earlawn Limited shall, without admission of liability, pay Lara Wood, the sum of \$5,000 in terms of the provisions of [s 123\(1\)\(c\)\(i\)](#) of the [Employment Relations Act 2000](#). This amount will be paid by way of direct credit. Instalments of \$200 per week

will be made for a 26 week period; the first instalment will commence within 7 days of this agreement. If an instalment is late, the full amount will become owing immediately.

[5] The first payment was not made by Earlawn Limited within seven days of the record of settlement being signed and so Ms Wood seeks payment of the sum in full in accordance with the terms of the agreement, less payments subsequently received. That outstanding balance now amounts to \$3,800.

[6] The respondent does not deny that the first payment was not made within the time period stipulated in the agreement, nor that, as a consequence, under the terms of the agreement, the full amount falls due. However, Mr Soal says that the reason for the failure to pay the first instalment was an error in setting up the payment system, and that subsequent illness prevented him from discovering the error. He has now rectified the error and regular

payments are now being made. He also says that the business (a café) is relatively new, having started trading in December 2017, and that it cannot pay the full amount as one lump sum.

[7] [Section 138\(4A\)](#) of the Act provides as follows:

If the compliance order relates in whole or in part to the payment to an employee of a sum of money, the Authority may order payment to the employee by instalments, but only if the financial position of the employer requires it.

[8] I am satisfied that a compliance order should be made requiring the respondent to pay to Ms Wood the balance of the amount in full, in accordance with the terms of the record of settlement. However, I must first enquire whether the financial position of the respondent requires payment by instalments.

[9] In order to assist the Authority Mr Soal sent a copy of the respondent's profit and loss statement, balance sheet as at 31 July 2018 [sic] 1 and cash summary for the three months ended 31 July 2018 [sic]2. The profit and loss summary covered the months of April to July

2018. A document sent subsequently showed aggregated profit and loss for the period

9 December 2017 to 31 March 2018.

[10] Mr Soal wished to keep the financial details of the respondent confidential, and Ms Wood did not object to that. I shall therefore not set out in this determination the financial details disclosed. However, having perused the details, I am satisfied that an order to the respondent to pay Ms Wood \$3,800 in one lump sum would cause it significant hardship. The details disclosed shows the income and expenses that one would expect for a small business which has only recently started operating. I therefore am satisfied that the financial position

of the respondent requires payment by instalments.

¹ Actually, I believe, 3 July 2018.

² See note 1.

[11] The final question to determine is what those instalments should be. I am satisfied that the respondent can accommodate payments of more than the \$200 a week it had originally agreed to pay. I believe that payments of \$300 a week are manageable. Whilst such a payment regime will probably be a challenge for the respondent, it should not precipitate a crisis, which would clearly be counterproductive.

[12] Last, Ms Wood asked for reimbursement of the \$71.56 Authority lodgement fee. I agree that she is entitled to that.

Order

[13] I order the respondent pursuant to [s 137](#) of the Act to pay to Ms Wood the sum of

\$3871.56 in the following instalments:

a. On or before 25 July 2018, the sum of \$300; b. Every seven days thereafter, \$300 per week; c. 17 October 2018, the sum of \$271.56.

[14] I remind the respondent that, pursuant to [s 138\(6\)](#) of the Act, if it fails to comply with this compliance order, Ms Wood would have the right to apply to the Employment Court for the exercise of its powers under [s 140\(6\)](#) of the Act, which exceed those of the Authority.

[15] There is no further order as to costs.

David Appleton

