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X v Z (Auckland) [2017] NZERA 381; [2017] NZERA Auckland 381 (8 December 2017)

Last Updated: 15 December 2017

Attention is drawn to the order prohibiting publication of certain information in this Determination

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2017] NZERA Auckland 381
3022231

BETWEEN X

First Applicant

A N D Y

Second Applicant

A N D Z Respondent

Member of Authority: Rachel Larmer

Representatives: Susan Hornsby-Geluk, Counsel for Applicants

Respondent in Person

Submissions:

Investigation Meeting:

06 November 2017 from Applicants

30 November 2017 from Respondent

On the papers

Date of Determination: 08 December 2017

DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

Employment Relationship Problem

[1] The Applicants seek a compliance order and costs for this application.

[2] The Applicants claim that the Respondent has not complied with the Authority's substantive determination of 18 August 2017¹ or its costs determination of 05 September 2017.²

¹ [2017] NZERA Auckland 244.

[3] These determinations are subject to the non-publication order issued on 27 July

2017.³ That non-publication order also covers these proceedings and this compliance determination.

[4] The amounts awarded to the Applicants in the substantive and costs determinations should have already been paid by the Respondent to the Applicants.

[5] The penalties imposed were to have been paid by 15 September 2017 in accordance with the substantive determination and the costs were to have been paid by 03

October 2017 in accordance with the costs determination.

[6] The Applicants say the Respondent has not paid any of the amounts he was ordered to pay to either Applicant. The Respondent does not dispute that.

[7] The Respondent did not file a Statement in Reply. Nor did he seek leave to file a Statement in Reply out of time. The compliance application was served on the Respondent on 11 November 2017.

[8] On 30 November 2017 the Respondent advised the Authority via email of medical issues which he said had adversely impacted on his ability to address this matter.

[9] Notwithstanding that the time for challenging the Authority's earlier determinations had elapsed, the Respondent also advised the Authority that he wished to challenge the substantive and costs determinations and that he was waiting to hear back for his lawyer that same day.⁴

[10] The Applicants provided the Authority with copies of their email requests to the Respondent asking to be paid the amounts the Authority had awarded them by 06 October or enforcement proceedings would be commenced. The first email request for payment of the amounts awarded also provided the Applicants' bank account details.

[11] There is no information before the Authority to contradict the Applicants' claims

that the Respondent has not paid anything in response to their request. The Respondent has not disputed that.

² [2017] NZERA Auckland 269.

³ [2017] NZERA Auckland 208.

⁴ Being 30 November 2017.

[12] The Authority's determinations and the Applicants request for payment appear to predate the Respondent's recent medical issue so I consider these do not provide an explanation or justification of his failure to comply with the orders made by the Authority.

[13] Nor does the Respondent's stated recent desire to challenge the Authority's previous determinations operate as a stay on the Authority orders. No stay application has been received.

[14] I am satisfied that the Respondent owes the Applicants money which they have requested and which he has still not paid.

[15] I consider it unlikely the Respondent will pay the Applicants the amounts or any part of the amounts they have been awarded unless the Authority issues a compliance order.

[16] The Respondent obviously has the right to challenge this compliance order so I

consider his rights can be protected in that regard.

[17] The position therefore is that the Applicants are entitled to recover the amounts they are owed in the absence of an order from the Employment Court to the contrary.

[18] It is for that reason that I consider it fair reasonable and appropriate to issue the compliance order sought by the Applicants.

[19] Accordingly, within 28 days of the date of this determination the Respondent, Mr Z (who was identified by his name in the Statement of Problem served on him) is ordered to comply with:

a. Paragraph [56] of the Authority's substantive determination dated 18

August 2017⁵ by paying:

i. \$2,000 to the First Respondent;

ii. \$2,000 to the Second Respondent;

b. Paragraph [34] of the Authority's costs determination dated 05 September

2017⁶ by paying:

5 Ibid 1.

- i. the First Respondent \$1,800 towards his legal costs plus \$35.78 as a contribution towards the filing fee incurred;
- ii. the Second Respondent \$1,800 towards its legal costs plus \$35.78 as a contribution towards the filing fee incurred.

[20] No compliance order has been issued regarding paragraph [56](c) of the Authority's substantive determination⁷ because that relates to a penalty which was ordered to be paid to the Crown and the Crown is not a party to this current compliance order application.

[21] The Applicants have sought costs in respect of this compliance application.

[22] The Applicants as successful parties are entitled to a contribution towards their actual legal costs for this compliance application. Total costs are to be pro-rated between the two Applicants.

[23] Within 28 days of the date of this determination the Respondent is ordered to pay:

- a. the First Respondent \$500 towards his actual legal costs plus \$35.78 to reimburse part of his filing fee;
- b. the Second Respondent \$500 towards its actual legal costs plus \$35.78 to reimburse part of the filing fee.

Rachel Larmer

Member of the Employment Relations Authority

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