

**Attention is drawn to the orders prohibiting publication of certain information in this determination**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2020] NZERA 428  
3098033

BETWEEN                      ZYI  
   Applicant  
  
AND                                DPX  
   Respondent

Member of Authority:        Philip Cheyne  
  
Representatives:              Paul Matthews, advocate for the Applicant  
   No appearance for the Respondent  
  
Investigation Meeting:        16 October 2020  
  
Date of Determination:        16 October 2020

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**DETERMINATION OF THE AUTHORITY**

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- A. DPX is to comply with the record of settlement dated 21 February 2020 between it and ZYI by paying ZYI \$3,200.00 in full by no later than Friday 30 October 2020.**
- B. DPX is to pay ZYI \$571.56 for costs in respect of these proceedings.**
- C. I prohibit the publication of the names of the parties and the terms contained in the record of settlement, except as disclosed in this determination.**

## **Employment relationship problem**

[1] DPX employed ZYI. There is a record of settlement between them dated 21 February 2020 and signed by a mediator on 24 February 2020.

[2] ZYI says that DPX has not complied with the record of settlement and seeks a compliance order and costs. At the case management conference ZYI sought to amend its claim to include a penalty and interest but did not proceed with the amendment as it would have necessitated delaying the investigation meeting to allow for service of the amended claim.

[3] DPX lodged a statement in reply but did not participate in the case management conference and did not appear at the investigation meeting. I am satisfied that the statement of problem and notice of meeting were served on DPX.

## **Determination**

[4] This determination confirms the oral indication of my preliminary findings and orders, given at the end of today's investigation meeting.

[5] I am satisfied that the record of settlement between ZYI and DPX is final and binding on and is enforceable by them.

[6] I accept ZYI's evidence today that he is still owed \$3,200.00 under the record of settlement. All the payments due under the settlement should have been made by 24 March 2020. I find that DPX has not complied with the record of settlement.

[7] I accept ZYI's evidence that he has been affected by DPX's non-compliance with the record of settlement. I find that he has established the grounds required before the Authority may order compliance.

[8] DPX's non-compliance relates to payment of money. I am able to order payment by instalments, but only if DPX's financial position requires it. In its reply, DPX says that it is

paying ZYI \$100.00 per week and nothing further can be done. However, DPX did not appear or produce any evidence in support of that assertion. The agreement in February 2020 required payment in two tranches, the first within 7 days and the second within 28 days. The evidence is that DPX's first payment a month after the settlement was less than 10% of the payment which it had agreed would be paid on 3 March. Small payments have been made more or less weekly since then. While DPX's financial position might have deteriorated suddenly so that it could only afford small weekly payments, I cannot make that finding without DPX producing evidence in support. I find that DPX's financial situation does not require me to order payment by instalments.

[9] ZYI is entitled to prompt compliance in full with the record of settlement. Allowing time for service on DPX of this order and for DPX to seek advice and make arrangements to comply, there will be an order for DPX to pay a further \$3,200.00 no later than Friday 30 October 2020.

[10] ZYI is entitled to costs on this matter, which I fix at \$500 plus the application fee of \$71.56, a total of \$571.56.

[11] The settlement included an obligation to keep the terms confidential. ZYI should not lose the benefit of that promise as a result of DPX's non-compliance with the agreed payments, so he is entitled to a non-publication order. ZYI does not oppose protecting the agreed confidentiality by extending the non-publication order to cover DPX as well. I find that protecting his confidentiality merits extending the non-publication order in that way.

[12] I attach to this determination a copy of s 140(6) of the Employment Relations Act 2000 so that DPX is aware of the consequences it risks if it breaches this compliance order.

Philip Cheyne  
Member of the Employment Relations Authority

*Excerpt from the Employment Relations Act 2000:*

**140 Further provisions relating to compliance order by court**

...

- (6) Where any person fails to comply with a compliance order made under section 139, or where the court, on an application under section 138(6), is satisfied that any person has failed to comply with a compliance order made under section 137, the court may do 1 or more of the following things:
- (a) if the person in default is a plaintiff, order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceedings:
  - (b) if the person in default is a defendant, order that the defendant's defence be struck out and that judgment be sealed accordingly:
  - (c) order that the person in default be sentenced to imprisonment for a term not exceeding 3 months:
  - (d) order that the person in default be fined a sum not exceeding \$40,000:
  - (e) order that the property of the person in default be sequestered.