

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE LOCATION OFFICE**

BETWEEN Kamlesh Singh (Applicant)

AND M F G Holdings Ltd t/a Blackies Bar & Restaurant
AND William McCormick, (Director) (Second Respondent)

REPRESENTATIVES John Coyle, Advocate for Applicant
Mr McCormick in person and for first respondent.

MEMBER OF AUTHORITY Y S Oldfield

INVESTIGATION MEETING 24 March 2006

DATE OF DETERMINATION 27 March 2006

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On February 10 2005 Ms Singh and Mr McCormick (in his capacity as director of the respondent) attended mediation regarding an employment relationship problem and arrived at a mediated settlement. The respondent has not complied with the following terms of settlement:

“ 5. The RESPONDENT shall within 14 days of the date hereof, pay to the APPLICANT the sum of three thousand four hundred and fifty dollars only (\$3,450.00) (the “compensatory sum”) in terms of s 123(c) (i) of the Employment Relations Act 2000...

...

8. The RESPONDENT SHALL MAKE A CONTRIBUTION TO THE applicant’s legal costs (“costs”) to a maximum sum of one thousand dollars plus GST.”

[2] Over the last year, on Ms Singh’s behalf, Mr Coyle has made repeated approaches to Mr McCormick for payment, even to the extent of passing the matter on to a debt collector. However he had no response from Mr McCormick who would not discuss payment at all.

[3] The restaurant at which Ms Singh had worked has continued to trade throughout this time. Recently, Mr Coyle said, it became known that it was up for sale. At that point, for fear that she would never see her money, Ms Singh gave instructions that an application for compliance be lodged. This was done on 16 January 2006. Because of the delays and the fact that Mr McCormick has not attempted to address payment before now, Ms Singh is seeking interest on the monies owed to her, costs and penalties (pursuant to s.134) against

her employer and against Mr McCormick personally. Mr Coyle told me that the applicant has incurred costs in respect of this application in the sum of \$550.00.

- [4] Mr McCormick, director of the respondent, cites cash flow difficulties as the reason for this non-compliance. He anticipates that the sale of the business should soon be complete. He has now given me an undertaking that he will make sure the mediated terms are met by 13 April 2006, from his own pocket if need be.

Determination and Orders

- [5] As I explained to the parties at the investigation meeting, I consider the requests for compliance, interest and costs to be reasonable in the circumstances. Because the level of costs is modest I am prepared to order that Ms Singh's costs are met in full. I therefore make the following orders:

- i. The respondent is ordered to comply with clauses (5) and (8) of the Terms of Settlement (as recorded above) no later than 13 April 2006.**
- ii. The respondent is further ordered to pay to the applicant interest on the sum owed pursuant to clause (5) at 8.5% percent per annum for the period from 24 February 2005 until the date of payment, and to pay this interest no later than 13 April 2006.**
- iii. The respondent is ordered to pay to the applicant the sum of \$550.00 as a contribution to her costs.**

- [6] This leaves only the matter of penalties. Section 134 of the Employment Relations Act provides as follows:

“Penalties for breach

- (1) Every party to an employment agreement who breaches that agreement is liable to a penalty under this Act.*
- (2) Every person who incites, instigates aids or abets any breach of an employment agreement is liable to a penalty imposed by the Authority.”*

- [7] For the information of the parties I also note that s. 136 provides:

“Application of penalties recovered

- (1) Subject to any order made under subsection (2) every penalty recovered in any penalty action, whether before the Authority or the Court, must be paid into the Authority or the Court, as the case requires, and not to the plaintiff, and must then be paid by the Authority or the Court into the Crown Bank Account.”*

- [8] It is well established that mediated terms of settlement are to be treated as employment agreements. There is of course no question that the first respondent has breached the terms of settlement, or that Mr McCormick was the human agent responsible for this breach. On the issue of penalties I have to weigh in the balance Mr McCormick's account of financial difficulties against the fact that the respondent has continued in business for a year in which there has been no attempt even to discuss the matter of payment with Ms Singh or her representative.

[9] It is also important that the Authority sends a clear signal that mediated terms of settlement must be honoured. Taking all these factors into consideration I conclude that a small penalty is appropriate.

[10] Pursuant to s.134 (1) and in respect of its breach of the agreement reached in mediation I order the first respondent, MFG Holdings Ltd, to pay a penalty of \$500.00.

[11] Pursuant to s.134(2) and in respect of the same breach I order the second respondent, Mr McCormick, to pay a penalty of \$500.00.

[12] Both penalties are to be paid to the Crown pursuant to s. 136 as set out above.

Y S Oldfield
Member of Employment Relations Authority