

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

AA 422/08
5135682

BETWEEN LAKE STREET AUTO
 SERVICES LIMITED T/A
 LAKE STREET AUTO
 SERVICE
 Applicant

AND LEIGH DAY
 Respondent

Member of Authority: Robin Arthur

Representatives: Tom Brown, for Applicant
 Respondent in person

Investigation Meeting: 5 December 2008 by telephone

Determination: 5 December 2008

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Lake Street Auto says Leigh Day has not kept his side of an arrangement to repay a loan by an agreed level of weekly instalments. The arrangement was made with the assistance of a Department of Labour mediator. The mediator certified a record of settlement between the parties under s 149 of the Employment Relations Act 2000 on 20 February 2008.

[2] The parties agreed that once Mr Day started at a new job he would pay \$20 a week for three months and then \$30 a week until the total loan of \$2164.31 was repaid in full. Lake Street Auto says Mr Day has not made a payment every week and has not increased his instalments to \$30 a week after the agreed three month period.

[3] Lake Street Auto applied for an order requiring Mr Day to immediately repay the full amount of the loan and to reimburse its \$70 fee for filing this application in

the Authority.

[4] By telephone today I heard from Mr Day and the owner of Lake Street Auto Terry Brown. Both men gave affirmed oral evidence. Mr Brown also provided a schedule of payments he said Mr Day had made since 13 March 2003 and identified six dates on which Lake Street Auto seems to have received no weekly payment. Following the telephone conference Mr Day provided copies of his bank statements showing automatic payments made on four of those dates to "T D Brown".

[5] On that basis of that information I have made the following calculation of arrears owed to Lake Street Auto:

▪ \$20.00 for each of the weeks of 20 March 2008 and 27 March 2008	\$40.00
▪ \$10.00 a week for the 24 weeks between 19 June and 27 November 2008 (inclusive and including the four dates where Mr Day's bank statements show payments of \$20 to "T D Brown") (Note: from 19 June 2008 Mr Day was due to pay \$30.00 a week but paid only \$20.00 a week.	\$240.00
▪ \$10.00 for the week of 4 December 2008	\$10.00
Total	\$290.00

[6] I cannot alter the scheme of repayments of relatively modest amounts over a 76 week period agreed by the parties in their full, final, binding and enforceable settlement made on 20 February 2008. Neither can I order Mr Day to repay the full outstanding amount immediately because that was not a term agreed upon by the parties in the event that payments by instalment were not made on time. And neither is it sensible to provide for the payment of the arrears by a further scheme of instalments. Through the existing scheme of instalments Mr Day has what amounts to an extended interest free loan for a debt he incurred during his previous employment. He needs to keep to the agreed bargain.

[7] I am satisfied that it is appropriate to order the arrears to be paid promptly and for future instalment payments to comply with the agreed weekly amount of \$30.00. Lake Street Auto is also entitled to be reimbursed its \$70 lodgement fee.

[8] In the event that Mr Day did not comply with the Authority's orders, Lake Auto Services may apply to the Employment Court for further orders. The Court has powers to impose fines, imprisonment and sequestration of property where a party does not comply with an order of the Authority.

Orders

[9] Mr Day is ordered to comply with the terms of the settlement made on 20 February 2008 by doing the following:

- (i) pay to Lake Auto Services the agreed weekly instalments of \$30 a week from 11 December 2009 until the amount of the loan is repaid in full; and
- (ii) within 14 days of the date of this determination, pay to Lake Auto Services the sum of \$290.00 owed as arrears on instalments due between 19 June and 5 December 2008.

[10] Mr Day is also ordered to pay Lake Auto Services the further sum of \$70 in reimbursement of its lodgement fee. That amount is also to be paid within 14 days of the date of this determination.

Robin Arthur

Member of the Employment Relations Authority