

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 8/10  
5276696

BETWEEN

JOHN UPCHURCH  
Applicant

AND

TE NGAWARI HAUORA  
CHARITABLE TRUST trading  
as NGAWARI MEDICAL  
CENTRE  
Respondent

Member of Authority: G J Wood

Representatives: John Upchurch on his own behalf  
Tiopira Rauna for the Respondent

Investigation Meeting: 14 January 2010 at Wellington

Submissions Received: 14 January 2010

Determination: 15 January 2010

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**DETERMINATION OF THE AUTHORITY**

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[1] After the applicant, Dr John Upchurch, had filed a claim in the Authority for moneys owing and unpaid at the end of his employment, the parties resolved that claim in mediation.

[2] One of the terms of settlement was that the respondent (the Trust) would pay Dr Upchurch the sum of \$14,348.29 *gross less a pro rata reduction for that part of the Medical Council fees applicable for the period subsequent to the applicant's resignation taking effect*. The sum owing was to be paid in two instalments, but no moneys at all have been paid under the settlement agreement.

[3] Dr Upchurch is therefore seeking compliance with the settlement, plus interests and costs.

[4] The Trust submitted that it has no money to pay Dr Upchurch at this point and prefers a longer time period for payment, as noted in its statement in reply.

[5] At the investigation meeting Mr Rauna undertook to provide correspondence with Inland Revenue about a substantial debt the Trust owed to it, plus copies of the Trust's bank statements.

[6] Having perused these documents, it is clear that the Medical Centre has operated in overdraft and that the Trust has significant debts to Inland Revenue, consistent with the evidence given by Mr Rauna at the investigation meeting.

[7] One of the key tenets of the compliance order jurisdiction is that a compliance order should not be made where the party has no ability to pay the sums in question. I accept on the evidence before me that the Trust cannot afford to pay Dr Upchurch the sum it owes him at this point.

[8] The Trust undertook, however, that it could make payments of \$500 per fortnight to Dr Upchurch, with the balance payable earlier should it receive sufficient funds from the sale of the Medical Centre (it being currently on the market).

[9] As indicated to the parties at the investigation meeting, I was prepared to accept this arrangement for payment to Dr Upchurch provided there was sufficient documentary evidence given to the Authority of the Trust's financial position (which has now occurred) and subject to certain conditions to ensure Dr Upchurch is paid the moneys he is owed at the earliest opportunity.

[10] The parties agreed (and I concur) that a reasonable allowance for interest and expenses incurred by Dr Upchurch in pursuing the claim would be to waive the sum owing to the Trust by Dr Upchurch for Medical Council fees of around \$500. It therefore follows that the Trust is to pay Dr Upchurch the sum of \$14,348.29 gross in order to resolve this employment relationship problem.

[11] Pursuant to ss.137 and 138 of the Employment Relations Act 2000 I therefore order the respondent, Te Ngawari Hauora Charitable Trust, trading as Ngawari Medical Centre to pay to the applicant, Dr John Upchurch, the sum of \$14,348.29 gross by way of fortnightly instalments of \$500 net, commencing on 20 January 2010, by way of direct credit into his bank account. Should the full \$500 net not be paid

into Dr Upchurch's bank account on or before any appropriate payment date, the full balance outstanding will become payable forthwith.

[12] The Trust is also to provide the Authority a copy of any sale and purchase agreement completed with another party or parties for the Medical Centre, within one week of it being signed by all relevant parties. Should it fail to do so, the balance of moneys owing will become due with effect from that date.

[13] Upon receipt of a copy of a sale and purchase agreement the Authority will contact the parties for further discussions on how the payments to Dr Upchurch can be made as quickly as possible consistent with the ability of the Trust to pay given the agreement, and this compliance order will then varied accordingly.

**G J Wood**  
**Member of the Employment Relations Authority**