

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA161A/10  
5293080

BETWEEN

RACHEL TAN  
AND JOANNA TAN  
Applicant

AND

BROADWAY HAIR  
AND BEAUTY LIMITED  
Respondent

Member of Authority: Robin Arthur

Representatives: Michael Tan for Applicants  
Vincent Godhino and Keith Coelho for Respondent

Investigation Meeting: On the papers

Determination: 9 April 2010

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**SUPPLEMENTARY DETERMINATION OF THE AUTHORITY**

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[1] Broadway Hair and Beauty Limited (BHBL) seeks an order allowing payment by instalment of arrears of wages and holiday pay due to Rachel Tan and Joanna Tan. By Authority determination 161/10 (7 April 2010) BHBL was ordered to pay a total of \$4626.80 owed to the two women within 14 days.

[2] The two Ms Tans oppose the application for payment by instalments.

[3] The Authority has a statutory discretion to order payment by instalments of wages or other money due to an employee, “*but only if the financial position of the employer requires it*”: s131(1A) of the Employment Relations Act 2000 (the Act).

[4] BHBL’s application for an instalments order is made on the basis that its business is “*running at a loss*” and cannot pay the total amount due within 14 days as ordered by the Authority.

[5] I **decline** to make the order sought.

[6] Section 131(1A) sets a relatively high threshold for the exercise of the discretion to order payment by instalments. It may be made “*only*” where the circumstances “*requires it*”. It must be necessary, not merely convenient. There must be sufficient evidence of the financial necessity.

[7] BHBL has not provided such evidence. It has been aware of the prospect of a requirement to pay those wages for some months.

[8] BHBL has not identified any inability to raise the money by way of a loan from a financial institution. Such a loan would likely be no more costly than paying by instalments as the Authority would probably have included an element of interest if it had made such an order. Interest would be appropriate if there were further delay in the Tans receiving money to which they were entitled in December 2009.

[9] Arrangements for payment now need to be made. The order made on 7 April for payment by 21 April 2010 is **varied** to allow some more time to make the necessary arrangements.

[10] Payment of the amounts ordered is to be made **by no later than 30 April 2010**. BHBL may be liable to orders for payment of further amounts as interest if the sums due are not paid by this date and the Tans seek a compliance order.

Robin Arthur  
Member of the Employment Relations Authority