

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 489
5323912

BETWEEN

MARIANNE SNELL
Applicant

AND

NEW ZEALAND INSTITUTE
OF SCIENCE AND
TECHNOLOGY LIMITED
Respondent

Member of Authority: Robin Arthur
Representatives: Applicant in person
Julai Chung for Respondent
Investigation: On the papers
Determination: 11 November 2011

DETERMINATION OF THE AUTHORITY

[1] This determination considers whether New Zealand Institute of Science and Technology Limited (the Institute) should be granted an order allowing payment by instalments of remedies due to its former employee Marianne Snell.

[2] On 28 October 2011 the Authority ordered the Institute to pay Ms Snell \$6787.56 for lost wages, arrears of wages and holiday pay, compensation for hurt and humiliation, and reimbursement of her Authority application fee.¹ (This amount does not include \$67.12 the Institute must also pay to IRD for Kiwisaver contributions.)

[3] The order required payments to Ms Snell to be made within 28 days – that is by 25 November 2011.

[4] The Institute sought an order allowing it to pay Ms Snell \$1000 now and the

¹ [2011] NZERA Auckland 468.

remainder by instalments of \$150 a week. Under that arrangement it would take 39 weeks for Ms Snell to be paid the full amount due to her. Ms Snell opposed such an arrangement and wanted full payment by the date first ordered by the Authority.

[5] Under section 123(2) of the Employment Relations Act 2000 (the Act) the Authority may order lost wages, benefits and compensation to be paid by instalments but only if the financial position of the employer requires it.

[6] Ms Chung, by email of 4 November, gave this explanation for the Institute proposing payment by instalment:

The reason being is that all our fees are deposited into the Public Trust and on a bi-monthly basis, the fees being “dripped” into our account. We have fixed expenses (rent, around 19 staff salary, electricity etc) to be paid and we are not able to pay the whole lump sum of the payment.

[7] I do not accept this establishes a requirement for payment by instalment. On the basis of expected cash flow – the fees instalments paid to the Institute by the Public Trust – Ms Chung’s statement indicates the Institute would have the means to arrange a bank loan for the amount due to Ms Snell and to then repay that loan by the instalments it proposed to the bank rather than drip feeding Ms Snell.

[8] Even if the Authority had agreed an instalment plan was required, it would usually add an amount for interest, so the Institute is no worse off having to borrow the money to pay Ms Snell. The important difference is that Ms Snell will not put out of the use of money due to her in that period.

[9] If the payments ordered by the Authority are not made by 25 November, Ms Snell will need to make a separate application for enforcement – either in the Authority for a compliance order or in the District Court under section 141 of the Act. If the Authority’s determination is filed with the District Court, enforcement is carried out by the court’s bailiffs.

Robin Arthur
Member of the Employment Relations Authority