

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2015] NZERA Wellington 57
5551946

BETWEEN ALAINE TAMATI-AUBREY
Applicant

AND BRIDGE CAFÉ & BAR
LIMITED previously known as
KORU EVENTS LIMITED
Respondent

Member of Authority: M B Loftus

Representatives: Applicant in Person
Zane Burnard for Respondent

Investigation Meeting: 9 June 2015 at New Plymouth

Submissions Received: At the investigation meeting

Determination: 9 June 2015

ORAL DETERMINATION OF THE AUTHORITY

[1] On 24 February 2015 the parties entered into an agreement which was signed by a mediator pursuant to s.149 of the Employment Relations Act 2000 (the Act).

[2] It required Bridge Café and Bar Limited (previously known as Koru Events Limited (Bridge Café)) pay Ms Tamati-Aubrey the sum of one thousand, four hundred dollars (\$1,400) pursuant to 123(1)(c)(i) of the Act. Payment was to be made by 6 March 2015. That did not occur and Ms Tamati-Aubrey sought an order that Bridge Café comply with the terms of settlement and pay the agreed amount.

[3] Before continuing it should be noted the application, as initially filed, identified the respondent as Zane Burnard. Mr Burnard is the sole director and a significant shareholder of Bridge Café. The intitulation on the agreement Ms Tamati-Aubrey seeks to enforce indicated Mr Burnard was not the correct respondent. This

was discussed during a telephone conference on 15 May 2015 and the respondents' identity was changed by agreement.

[4] Bridge Café accepts it agreed to the settlement in question. It accepts it has not complied and the agreed sum has not been paid. It accepts Ms Tamati-Aubrey should be paid but claims its financial situation means it is incapable of addressing the debt other than by instalments.¹ It asks that I order payment accordingly and suggests \$100 a week. It has already tried to apply this proposal by simply making some payments. To date two payments totalling \$200 have been made.

[5] In support of its request it be allowed to pay by instalments Bridge Café says while now profitable that has not always been the case and the current profit is required to address significant debt which it is now having some success in doing. Its assertions were supported with documentary evidence.

[6] Having considered the evidence I conclude this is a situation in which I should apply the discretion permitted by s.138(4A) of the Act and order payment in instalments.

[7] Turning to costs. As Ms Tamati-Aubrey was unrepresented at the investigation meeting these are limited and she seeks reimbursement of her filing fee (\$71.56) along with a further \$2.46 which was the cost of two telephone calls to the Authority about lodging her application. Given her total success and the respondents concessions I consider it appropriate Ms Tamati-Aubrey be reimbursed.

[8] Given the above I now order the respondent, Bridge Café and Bar Limited, pay the applicant, Alaine Tamati-Aubrey, the sum of \$1,274.02 (one thousand, two hundred and seventy four dollars and two cents).

[9] The payment ordered in [8] above is to be made via 5 instalments with a first payment of \$250.00 (two hundred and fifty dollars) to be made no later than Tuesday 16 June 2015. That is to be followed by three weekly payments of \$250.00 (two hundred and fifty dollars) payable no later than 23 June, 30 June and 7 July 2015. A fifth and final payment of \$274.02 (two hundred and seventy four dollars and two cents) is to be made no later than Tuesday 14 July 2015.

¹ Section 138(4A) of the Employment Relations Act 2000

[10] In closing I caution the respondent and its director, Mr Burnard, that failure to comply with the above orders may result in further consequences. Should such a failure be pursued in the Employment Court² potential consequences include the imposition of fines, the sequestration of property and/or imprisonment. Conversely, and perhaps more effectively, a certificate of determination may be sourced from the Authority and the matter pursued in the District Court.³

M B Loftus
Member of the Employment Relations Authority

² Sections 139 and 140 of the Employment Relations Act 2000

³ *Denyer v Peter Reynolds Mechanical Ltd t/a The Italian Job Service Centre* [2015] NZEmpC41 at [42] and *Broeks v Ross EmpC Auckland AC36A/09*, 11 November 2009 at [5]