

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2016] NZERA Christchurch 204
5605965

BETWEEN DIANE WEALLEANS
Applicant

A N D A FEMININE FINISH
LIMITED
Respondent

Member of Authority: T G Tetitaha

Representatives: J Goldstein, Counsel for Applicant
P Zwart, Counsel for Respondent

Submissions Received: 10 October and 15 November 2016 from Applicant
21 October and 4 November 2016 from Respondent

Date of Determination: 16 November 2016

REOPENING DETERMINATION OF THE AUTHORITY

- A. I grant an order reopening the investigation into the personal grievance to hear the application for the payment by instalments only.**
- B. There is an order for payment by A Feminine Finish Limited to Diane Wealleans the sum of \$15,000 compensation for hurt and humiliation pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000. This sum is to be paid at the rate of \$1,000 per calendar month starting within one month of this determination.**
- C. There is an order for the payment of interest at 5% per annum accruing daily from the date of this determination until payment in full.**
- D. The parties shall meet their own costs for this application.**

Employment Relationship problem

[1] The Authority issued its oral determination dated 29 September 2016¹ ordering payment by A Feminine Finish to Diane Wealleans of \$15,000 compensation for hurt and humiliation.

[2] At the end of the investigation meeting and prior to the issue of the written determination, the respondent made an application to make payment by instalments if it was unable to reach any agreement with the applicant.

[3] A written decision was issued prior to this application being resolved. The respondent now seeks to progress this application. The applicant has objected to this due to the closure of the investigation. The applicant was invited to make submissions about the instalments application but has advised she had no further comment.²

Reopening

[4] The investigation into the personal grievance was closed following the issue of the written determination on 29 September 2016. It is accepted the respondent made an oral application for payment by instalments at the end of the investigation meeting but prior to the issue of the written determination. That application was not able to be resolved between the parties. It was not resolved by the Authority either prior to the issue of its written determination.

[5] An investigation may be reopened upon such terms as are reasonable.³ The overriding consideration must be the interests of justice, having regard to the likelihood of a miscarriage of justice balanced against other relevant factors such as the importance of finality in litigation.⁴ This is reinforced by the requirements upon the Authority in carrying out its role. The Authority is able to follow whatever procedure it considers appropriate⁵ in accordance with the principles of natural justice and act in a reasonable manner having regard to its investigative role.⁶

¹ *Diane Wealleans v. A Feminine Finish Limited* [2016] NZERA Christchurch 178

² Minute by email dated 15 November 2016 and email J Goldstein dated 15 November 2016.

³ Clause 4 Second Schedule of the Act.

⁴ *Young v Board of Trustees of Aorere College* [2013] NZEmPC 111 at [9].

⁵ Sections 157(2)(a), 160(1)(f) and 173(1)(a) of the Employment Relations Act 2000 (Act).

⁶ Section 173(1)(b) of the Act.

[6] The reality of how this jurisdiction is now required to operate means that oral determinations must be recorded in writing within one month of the conclusion of the investigation meeting.⁷ Here the written determination was issued within three days of the investigation meeting. Unfortunately this meant the application to make payments by instalments was not able to be considered by the parties and Authority prior to the investigation being closed upon the issue of the written determination.

[7] The failure to deal with an application or issue before the Court or Authority is a miscarriage of justice.⁸ Finality can be met by the limited reopening to deal with the instalments application only. Therefore I grant an order reopening the investigation into the personal grievance to hear the application for the payment by instalments only.

Payment by instalments

[8] The Authority when making an order under s.123(1)(b) or (c) of the Act may order payment by instalments “but only if the financial position of the employer requires it.”⁹

[9] The respondent has now filed an affidavit from the company’s accountant showing its financial position. In the accountant’s view, the company could not afford to pay more than \$1,000 per calendar month.

[10] There is evidence of the financial deterioration of the company including a \$52,930 IRD debt excluding penalties. It has entered into a repayment arrangement with IRD at \$2,000 per month over 27 months. It was also required to replace assets such as the company motor vehicle and a carpet cleaner to ensure it continued trading. The accountant estimates as at 30 September 2016 the respondent’s debts exceed its income by \$33,714.

[11] There is sufficient information to show the employers financial position and the prospects of the applicants being paid requires payment by instalments.

⁷ Section 174A(2) of the Act.

⁸ *New Zealand Nurses Organisation v Waikato District Health Board & Anor* [2016] NZEmpC 89 at [29].

⁹ Section 123(2) of the Act.

[12] Given the payment is projected to occur over 15 months I also exercise my discretion to award interest at 5% per annum accruing daily from the date of this determination until payment in full.

[13] The following orders are now made:

- a) I grant an order reopening the investigation into the personal grievance to hear the application for the payment by instalments only.
- b) There is an order for payment by A Feminine Finish Limited to Diane Wealleans in the sum of \$15,000 compensation for hurt and humiliation pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000. This sum is to be paid at the rate of \$1,000 per calendar month starting within one month of this determination.
- c) There is an order for the payment of interest at 5% per annum accruing daily from the date of this determination until payment in full.
- d) The parties shall meet their own costs for this application.

TG Tetitaha
Member of the Employment Relations Authority