

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2017] NZERA Auckland 77  
3000131

BETWEEN                      JANETTE LINNEA CHESNUTT  
Applicant

A N D                              GISBORNE RETURNED AND  
SERVICES ASSOCIATION INC  
Respondent

Member of Authority:        James Crichton

Representatives:             Michelle England, Advocate for Applicant  
No appearance for Respondent

Investigation Meeting:      On the papers

Date of Determination:      22 March 2017

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     By determination dated 5 October 2016, the Authority made orders against the respondent (Gisborne RSA) and in favour of the applicant (Ms Chesnutt) and directed that the monetary sums be paid by Gisborne RSA to Ms Chesnutt within 28 days of the date of that determination. Those payments were not made.

[2]     A compliance order application was filed in the Authority by Ms Chesnutt on 17 November 2016 and the following day, Gisborne RSA applied to the Employment Court for leave to file a challenge to the Authority's determination out of time.

[3]     No statement in reply was filed by Gisborne RSA to the compliance order application in this Authority.

[4]     When the Authority matter came onto my list, I convened a telephone conference with the parties on 17 January 2017 and my first Minute on this matter

issued on even date. That first Minute records my conviction from the telephone conference that Gisborne RSA believed erroneously that their challenge to the Authority's substantive determination acted as a stay. More than that, Gisborne RSA appeared to believe that his Honour Judge Perkins, who was seised of the matter in the Employment Court, intended to deal with all matters between these parties (inclusive of the compliance order application), at the judicial settlement conference which he would convene at Gisborne on 27 March 2017.

[5] Notwithstanding the opposition of Ms Chesnutt's advocate to that interpretation of the Court's position, I elected to establish the Court's view of the matter and revert to the parties.

[6] I did that by way of my second Minute dated 25 January 2017 in which I recorded the Court's intention that all matters be available for resolution at the forthcoming judicial settlement conference provided the parties could agree on a stay.

[7] In my second Minute I observed, in paras. 4 and 5:

... the parties need to agree a stay of the compliance order proceedings now before the Authority.

[5] So that that can happen without unnecessary disputation, the Gisborne RSA ought to pay into Court a sum equivalent to the total amount awarded against it in the original Authority determination issued under [2016] NZERA Auckland 339 on 5 October 2016.

[8] I then noted that such a stance would make clear that the Gisborne RSA was entering into the judicial settlement conference in good faith and for the avoidance of doubt, I set out carefully the desired course of action.

[9] Notwithstanding those efforts, Gisborne RSA has failed absolutely to take the necessary steps to ensure that this compliance order matter could be stayed and on that footing, in my third minute dated 3 March 2017 I set out a timetable for the parties to provide me with written submissions so that I could deal with the compliance order application.

[10] I also made it clear that if Gisborne RSA, at any point up to the issue of this determination were to lodge the required funds in the Court so as to perfect the stay of this proceeding, I would immediately cease my process and not issue this determination. That course of action has not been taken by Gisborne RSA and accordingly this determination must proceed to issue.

## **Determination**

[11] The determination of the Authority issued as [2016] NZERA Auckland 339 on 5 October 2016 found for Ms Chesnutt and made monetary orders in her favour which were due to be paid within 28 days of the determination.

[12] Those sums have not been paid and on an application now from Ms Chesnutt for compliance with the original determination of the Authority I now order that compliance. Gisborne RSA is to pay to Ms Chesnutt the following sums within 14 days of this determination:

- (a) \$3,026 gross in lost wages;
- (b) \$6,000 net in compensation;
- (c) \$71.56 as reimbursement of the Authority filing fee.

[13] A copy of this determination is to be filed in the Employment Court for the assistance of His Honour Judge Perkins.

James Crichton  
Chief of the Employment Relations Authority