

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 689  
3077653

BETWEEN

STEPHEN TAYLOR  
Applicant

AND

FARM BEACH TRANSPORT  
LIMITED  
Respondent

Member of Authority: Rachel Larmer

Representatives: Ken Usmar, Advocate for the Applicant  
No appearance by Respondent

Investigation Meeting: 2 December 2019 at Tauranga

Written of Oral Record  
Issued: 2 December 2019

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**ORAL DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] On 2 September 2019 the Authority issued an oral determination that ordered Farm Beach Transport Limited (Farm Beach) to pay Mr Taylor \$22,871.06 (“*the substantive determination*”).<sup>1</sup>

[2] No payments have been made by Farm Beach to Mr Taylor and no arrangements have been made by it to pay him the money he is owed.

[3] Mr Taylor has now applied for a compliance order against Farm Beach.

[4] Mr Taylor seeks an order from the Authority that Farm Beach pays him the amount that it was ordered to pay him in the substantive determination.

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<sup>1</sup> *Taylor v Farm Beach Transport Limited* [2019] NZERA 513 at [58].

[5] Mr Taylor also seeks interest on the money he is owed and costs for this application, as well as reimbursement of his actual service fees and filing fee.

### **Service on Farm Beach**

[6] The Authority served its substantive determination on Farm Beach, by email at 1.04pm, on 2 September 2019.

[7] Mr Taylor also personally served the substantive determination on Farm Beach at its registered office at 134B Marine Parade, Mount Maunganui, Tauranga 3116 at approximately 5:00 p.m. on 9 September 2019.

[8] Although Mr Taylor's originating claims were served on it, Farm Beach did not participate in the Authority's substantive investigation.

[9] Likewise, Farm Beach has again elected not to participate in the Authority's investigation. It has not filed a Statement in Reply, it has not sought leave to file a Statement in Reply out of time, and it did not appear at the Authority's investigation meeting that was held in Tauranga today.

[10] The Authority is satisfied that Mr Taylor's Statement of Problem and the Authority's Notice of Hearing were served on Farm Beach at its registered address for service.

[11] Mr Usmar provided evidence about the problems he had faced in effecting service on Farm Beach's registered office. It appears that Farm Beach has been deliberately attempting to avoid service. A locked gate has been installed and persons on the property refused to accept the documents or to let the process server through the gate.

[12] The Authority ordered that service on Farm Beach could occur by taping an envelope containing the documents, marked service documents, to the locked gate during normal business hours. That occurred, and photos proving service have been provided.

### **Failure of Farm Beach to comply with substantive determination**

[13] The Authority accepts Mr Taylor's uncontested evidence that he has not received any money from Farm Beach, after the Authority's substantive determination being served on it on 9 September 2019. Nor has Farm Beach made any arrangements with Mr Taylor to pay him.

[14] Farm Beach is therefore in breach of its obligation to pay Mr Taylor the \$22,871.06 he was awarded in the Authority's substantive determination dated 2 September 2019.

[15] The Authority is satisfied that it is highly unlikely that Mr Taylor will receive any money from Farm Beach unless a compliance order is issued.

### **Compliance order issued against Farm Beach**

[16] Mr Taylor's application for a compliance order succeeds.

[17] The Authority orders Farm Beach to comply with its substantive determination on or before 20 December 2019, by paying Mr Taylor \$22,871.06 plus interest on that amount, as specified below.

[18] Mr Taylor is also entitled to interest on the outstanding amount of \$22,871.06, until it has been paid in full, because Farm Beach has obtained the benefits of retaining money that he should have already been paid to him.

[19] Interest is therefore awarded to Mr Taylor under the Interest on Money Claims Act 2016.

[20] Interest is to run on the amount of \$22,871.06 from 2 September 2019 until all moneys have been awarded to Mr Taylor have been paid in full. The amount of interest is to be calculated using "*the civil debt interest calculator*" on the Ministry of Justice's website.

### **Costs awarded today**

[21] In terms of this claim today, Mr Taylor is now also entitled to recover from Farm Beach:

- (a) \$1,000 contribution towards his actual legal costs;
- (b) \$1,087.25 being his actual invoiced service costs (\$190.25 service of Authority's substantive determination on 5 September 2019 + \$569.25 service of Statement of Problem on 10 October 2019 + \$327.75 service of Notice of Hearing on 5 November 2019);
- (c) His filing fee of \$71.56.

[22] Mr Taylor is also awarded interest, under the Interest on Moneys Claim Act 2016, to be calculated using the civil debt interest calculator on the Ministry of Justice website, on this additional new amount of \$2,158.81.

[23] Interest on \$2,158.81 is to run from the date of this determination until that full amount has been paid to Mr Taylor.

**Summary of Authority's orders**

[24] On or before 20 December 2019, Farm Beach is ordered to pay Mr Taylor:

- (a) \$22,871.06 plus interest on that amount, to run from 2 September 2019 until it has been paid in full, under the substantive determination;<sup>2</sup> and
- (b) \$2,158.81 plus interest on that amount, to run from the date of this determination until it has been paid in full, under this compliance order determination.

**Warning to Farm Beach**

[25] Failure by Farm Beach to comply with this compliance order may result in Mr Taylor applying to the Employment Court under s 139 of the Employment Relations Act 2000 (the Act) for a further compliance order, from the Court.

[26] In which case, the Court may (among other things) in accordance with s 140(6) of the Act:

- (a) Impose a term of imprisonment not exceed three months;
- (b) Impose a fine of up to \$40,000; or
- (c) Order that Farm Beach's property be sequestered.

**Rachel Larmer**  
**Member of the Employment Relations Authority**

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<sup>2</sup> Above n1.