

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 117
3084637

BETWEEN	HARPREET SINGH First Applicant
AND	JASWINDER SINGH Second Applicant
AND	SRI GURU SINGH SABHA AUCKLAND INC Respondent

Member of Authority:	Jenni-Maree Trotman
Representatives:	May Moncur, advocate for the Applicants Arunjeev Singh, counsel the Respondent
Investigation Meeting:	On the papers
Submissions and further Information Received:	22 January 2020 from the Applicants None from the Respondent
Date of Determination:	13 March 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 29 October 2019 the Authority issued a determination in which it found the Applicants had each suffered unjustified disadvantages to their employment (the October Determination).¹ The Respondent was ordered to pay each Applicant wage and holiday pay arrears as well as sums under s 123(1)(b) of the Employment Relations Act (the Act) and compensation under s 123(1)(c)(i). In addition, the Respondent was

¹ [2019] NZERA Auckland 615.

ordered to pay a sum of \$40,000 by way of penalty for its various breaches of the Act, the Minimum Wage Act 1983 and the Holidays Act 2003.

[2] This determination addresses an application by the Applicants for an order that the Respondent comply with the orders made in the October Determination.

[3] The Respondent opposes the Applicants' application on the grounds that it has filed a Statement of Claim in the Employment Court seeking a de novo hearing of the Applicants' claim. In the alternative, it applies to the Authority for a stay of the Applicant's compliance application pending release of the Employment Court's de novo determination.

[4] As permitted by 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made but has not recorded all evidence and submissions received.

The process

[5] This matter was heard on the papers. Directions were made for the filing of affidavits and submissions by the Applicant by 22 January 2020 and by the Respondent by 22 February 2020.

[6] Submissions were filed by the Applicant on 22 January. That same day the Authority received an email from the Respondent's Counsel advising:

I hereby notify the Authority that an application for stay of the determination has already been filed in the Employment Court by the Plaintiff/Respondent and duly served on the representative of the Defendants/Applicants. They have 14 clear days starting 21 Jan 2020 to respond to the application.

A directions conference has been set down by the EC on 20th Feb 2020 in the substantive de novo challenge to the determination in which the Defendants/Applicants have already filed their statement of defence.

I will be filing submissions/affidavits as per the time tabling directions dated 22 Jan 2020 unless a stay order is granted by the Empl Court prior to that.

[7] There has been no further contact from the Respondent and no submissions and/or affidavits have been received. This is despite the Authority sending the Respondent's Counsel a reminder. The Authority has not been notified that the Employment Court has granted a stay.

The issues

[8] The issues requiring investigation and determination are:

- a) Has the Respondent failed to comply with the Authority's October Determination? If so, should a compliance order be made under s137 of the Act?
- b) Should the Authority order a stay?
- c) Should either party contribute to the costs of representation of the other party?

Issue one: Has the Respondent failed to comply with the Authority's October Determination?

[9] There is no dispute that the Respondent has failed to comply with the Authority's October Determination.

[10] First, by failing to pay the First Applicant the following amounts within 14 days of the date of the determination:

- a. The combined sum of \$9,105.10 gross for wage arrears under s 131 of the Act.
- b. The sum of \$297 gross under s 50 of the Holidays Act.
- c. The sum of \$721.44 gross under s 60 of the Holidays Act.
- d. The sum of \$1,237.76 gross under s 23 of the Holidays Act.
- e. The combined sum of \$10,772.05 under s 123(1)(b) of the Act.
- f. The sum of \$10,000 under s 123(1)(c)(i) of Act.

[11] Second, by failing to pay the Second Applicant the following amounts within 14 days of the date of the determination:

- a. The combined sum of \$11,177.60 gross for wage arrears under s 131 of the Act.
- b. The sum of \$334.12 gross under s 50 of the Holidays Act.

- c. The sum of \$773.19 gross under s 60 of the Holidays Act.
- d. The sum of \$1,326.53 gross under s 23 of the Holidays Act.
- e. The combined sum of \$10,772.05 under s 123(1)(b) of the Act.
- f. The sum of \$10,000 under s 123(1)(c)(i) of the Employment Relations Act.

[12] Third, by failing to pay to a sum of \$40,000 by way of penalty ordered by the Authority for the Respondent's 2 breaches of the IEA, its 2 breaches of the Minimum Wage Act and its 4 breaches of the Holidays Act. This sum was to be paid to the Employment Relations Authority within 28 days of the date of the determination.

[13] In the circumstances it is appropriate that the Authority make a compliance order requiring the Respondent to comply with the Authority's determination dated 29 October 2019 by making payment of the sums particularised at paragraphs 10, 11 and 12 herein within 7 days of the date of this determination.

Issue two: The application for a stay

[14] For completeness, I record I considered the Respondent's application for a stay that was contained within the body of its Statement of Reply. However, for the reasons that follow, I decline to order a stay.

[15] Section 180 of the Act provides that an election to challenge a determination of the Authority does not operate as a stay of proceedings unless the Court or Authority so orders.

[16] The Authority has a discretion as to whether to grant a stay. There must be evidence justifying the exercise of the discretion, and the overriding consideration is the interests of justice.²

[17] The Court of Appeal in *NZ Cards Ltd v Ramsay* described the criteria to be considered in stay applications as follows:³

In determining whether or not to grant a stay, the Court must weigh the factors in the balance between the successful litigant's rights to the fruits of a judgment and the need to preserve the position in case the appeal is successful.

² *North Dunedin Holdings Ltd v Harris* [2011] NZEmpC 118 at [7].

³ *New Zealand Cards Ltd v Ramsay* [2013] NZCA 582 at [7], footnotes omitted.

Relevant factors include whether the appeal would be nugatory, if the stay were not granted, the bona fides of the applicant as to prosecution of the appeal, the effect on any third parties, injury or detriment to the respondent if the stay is granted, the novelty and importance of the question involved, the public interest in the proceedings, the strength of the case on appeal and the overall balance of convenience.

[18] These factors were also outlined by the Court in *Assured Financial Peace Limited and Prosper With Us v Pais*.⁴

[19] In the present case, there is no evidence justifying the exercise of the Authority's discretion. The only information provided to the Authority was that contained in the Statement of Reply, namely:

The Respondent submits that this Statement in Reply may be considered as a formal Application for stay of the present Application filed by the Applicants and the Authority should stay further proceedings in this Application enabling the parties to resolve the matter through the Employment Court.

[20] In the circumstances, I decline the Respondent's application for a stay.

Issue three: Costs

[21] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[22] If they are not able to do so, and an Authority determination on costs is needed, the Applicants may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum the Respondent will then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[23] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁵

⁴ *Assured Financial Peace Limited and Prosper With Us v Pais* [2010] NZEmpC 50 at [5].

⁵ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].

Outcome

[24] The following orders are made:

A. The Respondent has failed to comply with the Authority's determination dated 29 October 2019.

B. The Respondent must comply with the Authority determination dated 29 October 2019 by making payment of the following within 7 days of the date of this determination:

a. By paying the First Applicant:

i. The combined sum of \$9,105.10 gross for wage arrears under s 131 of the Act.

ii. The sum of \$297 gross under s 50 of the Holidays Act.

iii. The sum of \$721.44 gross under s 60 of the Holidays Act.

iv. The sum of \$1,237.76 gross under s 23 of the Holidays Act.

v. The combined sum of \$10,772.05 under s 123(1)(b) of the Act.

vi. The sum of \$10,000 under s 123(1)I(i) of the Act.

b. By paying the Second Applicant:

i. The combined sum of \$11,177.60 gross for wage arrears under s 131 of the Act.

ii. The sum of \$334.12 gross under s 50 of the Holidays Act.

iii. The sum of \$773.19 gross under s 60 of the Holidays Act.

iv. The sum of \$1,326.53 gross under s 23 of the Holidays Act.

v. The combined sum of \$10,772.05 under s 123(1)(b) of the Act.

vi. The sum of \$10,000 under s 123(1)I(i) of the Act.

c. By paying the Employment Relations Authority a sum of \$40,000 by way of penalty ordered by the Authority for the Respondent's 2

breaches of the IEA, its 2 breaches of the Minimum Wage Act and its
4 breaches of the Holidays Act.

C. Costs are reserved

Jenni-Maree Trotman
Member of the Employment Relations Authority