

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 131
3089312

BETWEEN	CARL BLOOMFIELD Applicant
AND	TEN GROUP LIMITED First Respondent
AND	TANIA HAYDEN Second Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in Person
No Appearance by First or Second Respondent

Investigation Meeting: On the papers

Date of Determination: 27 March 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Carl Bloomfield was employed by Ten Group Limited (Ten Group) from May 2017 to 21 October 2019. Tania Hayden is Ten Group's sole director. She is also a 50% shareholder in Ten Group.

[2] Mr Bloomfield was awarded \$24,512.07 by the Authority in a substantive determination issued on 9 January 2020.¹ He has not been paid any of the money he was awarded.

[3] Mr Bloomfield has applied for a compliance order against Ten Group to pay him the money he was awarded.

[4] Mr Bloomfield also seeks an order that Ms Hayden pay him the wage arrears that Ten Group is unable to pay because she is a person involved with breaches by Ten Group of employment standards.

Leave to pursue Ms Hayden personally

[5] The Authority granted Mr Bloomfield leave under s 142Y(2)(a) of the Employment Relations Act 2000 (the Act) to pursue Ms Hayden personally for Ten Group's liability to pay Mr Bloomfield the wages and other money he had been awarded, if Ten Group was unable to pay those amounts to him.²

No Statement in Reply

[6] Neither of the respondents filed a Statement in Reply.

[7] On 12 February 2020 the Authority reminded the respondents that Statements in Reply were due but there was no response to that. A delivery receipt to Ms Hayden's iCloud email confirmed that delivery had occurred.

[8] On 4 March 2020 the Authority emailed Ms Hayden at her iCloud email address advising that the time for filing Statement(s) in Reply had expired so the respondents would now need to apply for leave to file Statement(s) in Reply out of time if they wanted to defend Mr Bloomfield's claims.

[9] The Authority set out what information was required from them if they wanted to seek leave. The respondents were advised that failure to apply for leave could result in the being unable to defend Mr Bloomfield's claims against them.

¹ *Bloomfield v Ten Group Limited* [2020] NZERA 7.

² Above n1, at [31].

[10] The respondents were given until 17 March 2020 to file a leave application. No leave application was received.

Authority's Minute

[11] The Authority issued a Minute dated 14 February 2020 that:

- (a) Put Ms Hayden on notice that she could be held personally liable for wage arrears and other money if Ten Group was unable to pay Mr Bloomfield those amounts.
- (b) Reminded the respondents of the 14 day time limit for filing statement(s) in reply.
- (c) Recorded investigation meeting date of 23 March 2020.
- (d) Directed the respondents to provide relevant documents, regardless of whether or not they wanted to defend Mr Bloomfield's claims.
- (e) Advised the respondents that the investigation meeting would proceed on 23 March 2020 in their absence.
- (f) Failure by the respondents to provide the information the Authority had directed them to provide would result in the matter being determined based on the information the Authority had available to it.
- (g) Informed them that mediation had not been directed due to the nature of the claims.
- (h) Set out how they could access free legal advice.

Service

[12] The Statement of Problem was served on Ten Group at its registered office and address for service by track and trace courier on 31 January 2020. It was signed for by Tegan Adams at Gillian Rowe and Associates LP (Ten Group's accountants) at 9.20am on 31 January 2020.

[13] The Statement of Problem was also served on Ms Hayden at her home address on 3 February 2020. It was signed for by Z5007A ATL under an "*authority to leave*" with Courier Post.

[14] The Authority has communicated with Ms Hayden via email using her icloud address, which she had previously used to communicate with the Authority. She also emailed the Authority from this email adress on 23 March 2020, attaching documents.

[15] When no responses were received from the respondents the Authority considered it prudent to arrange for personal service to occur.

[16] Mr Bloomfield's Statement of Problem and attachments, the Notice of Hearing and the Authority's Minute were all personally served on Ms Hayden at her home address, on 25 Febnuary 2020, by a process server. Ms Hayden signed the envelop the process server had as proof of her identity.

No investigation meeting

[17] On 23 March 2020 (the day of this investigation meeting) the Ministry of Business Innovation and Employment (MBIE) advised the Authority that in person investigation meetings could not be held. The Authority shut its premises later that day.

[18] The Authority informed the parties of the issue by email and advised that the matter would be determied 'on the papers' based on the available information.

On the papers determination

[19] The Authority was satisfied that both respondents were aware:

- (a) Of these proceedings;
- (b) That they were required to file a Statement in Reply within 14 days of service of the Statement of Problem;
- (c) That they had missed the deadline for filing Statement(s) in Reply so required leave to file a Statement in Reply out of time;
- (d) That any leave application had to be filed by 17 March 2020;
- (e) That they had been directed by the Authority to provide specified relevant documents, regardless of whether or not they wanted to defend Mr Blomfield's claims;

- (f) That the 23 March 2020 investigation meeting had been converted to an ‘on the papers’ investigation;
- (g) That the Authority would be determining the claims based on the information it had received as at 23 March 2020.

[20] All parties have had an opportunity to participate in the Authority’s investigation by submitting relevant information.

Issues to be determined

[21] The following issues are to be determined:

- (a) Has Ten Group failed to comply with the Authority’s substantive determination?³
- (b) If so, should a compliance order be imposed on Ten Group?
- (c) Is Ms Hayden a person involved in Ten Group’s breaches of employment standards?
- (d) If so, should Ms Hayden be required to pay Mr Bloomfield the wages or other money he has been awarded?
- (e) Should Mr Bloomfield be awarded interest on the money that the respondents have been ordered to pay him?
- (f) What if any costs should be awarded?

Has Ten Group failed to comply with the Authority’s substantive determination?

[22] Mr Bloomfield has contacted Ms Hayden asking for her (as Ten Group’s director) to arrange for Ten Group to pay him the money he was awarded by the Authority. His two emails to her were not responded to. His two text messages to her resulted in her responding “*You need to contact the liquidator Grant Reynolds.*”

[23] The Companies Office does not record that Ten Group is in liquidation. Mr Bloomfield’s attempts to contact Mr Reynolds have not been responded to. Neither Mr Reynolds or any other liquidator have contact the Authority about this matter.

³ Above n1.

[24] Mr Bloomfield has failed to comply with the Authority's substantive determination because it has not paid any of the money that it was ordered to pay in that determination.

If so, should a compliance order be imposed on Ten Group?

[25] The Authority is satisfied that Ten Group is unlikely to pay Mr Bloomfield anything if a compliance order is not issued.

[26] It is therefore appropriate for the Authority to exercise its discretion under s 137(2) of the Employment Relations Act (the Act) to order that Ten Group must comply with paragraph [53] of its substantive determination by paying Mr Bloomfield \$24,512.07, within 14 days of the date of this determination.

Is Ms Hayden a person involved in Ten Group's breaches of employment standards?

[27] The Authority concluded that Ms Hayden was a person involved in Ten Group's breaches of employment standards in paragraphs [22]-[31] of its substantive determination.⁴

[28] Ms Hayden is the sole director of Ten Group and she ran the business. She also directly caused the breaches of employment standards to occur.

[29] The Authority in its substantive determination at paragraph [31] granted Mr Bloomfield leave under s 142Y(2)(a) of the Act to pursue Ms Hayden for personal liability to pay wages and other money that Ten Group has failed to pay.

If so, should Ms Hayden be required to pay Mr Bloomfield the wages or other money he has been awarded?

[30] Ms Hayden has deliberately misled Mr Bloomfield. She convinced him to continue working without pay on the basis he was about to be paid. She made payments from Ten Group to herself (repaying money she had advanced it) and possibly to family members such as her husband.

[31] On 31 October 2019 Ms Hayden assured Mr Bloomfield that he would be paid his final pay as soon as one of Ten Group's client's (Naylor Love) had paid it. Thirty minutes after giving Mr Bloomfield that assurance, Naylor Love paid Ten Group \$18,403.45. However

⁴ Above n1.

instead of paying Mr Bloomfield part of what he was owed Ms Hayden decided to use that money to pay numerous other accounts.

[32] Mr Bloomfield received nothing.

[33] The Authority is satisfied that Ms Hayden should personally pay Mr Bloomfield wages and other money he has been awarded if Ten Group has not paid Mr Bloomfield what he has been awarded within 14 days of the date of this determination.

[34] The wages and other money does not cover the \$2,000 part of the penalty that was imposed on Ten Group, that it was ordered to pay Mr Bloomfield personally, because the Authority considers that penalty awards do not fall within s 142Y of the Act.

Should Mr Bloomfield be awarded interest on the money that the respondents have been ordered to pay him?

[35] Mr Bloomfield has faced a dire financial situation that, in the current Covid 19 climate, is likely to deteriorate further.

[36] Ms Hayden and Ten Group have effectively been using what is actually Mr Blomfield's money. He is entitled to interest on the amounts he is owed.

[37] Ten Group is to pay interest on the \$19,764.88 wage arrears from 31 October 2019 to 23 January 2020.

[38] Ms Hayden is to pay interest from 24 January 2020 on the full amount of \$24,512.36 that Ten Group was ordered to pay Mr Blomfield in paragraph [53] of the substantive determination.⁵ Interest runs until Mr Bloomfield has been paid the full amount he is owed.

Warning to respondents

[39] Failure of Ten Group to pay this money by the specified time, may result in Mr Bloomfield applying under s 139(4) of the Employment Relations Act 2000 (the Act) to the Employment Court for a compliance order to be issued under s 139(2) of the Act.

⁵ Above n1.

[40] Failure to comply with this compliance order may also result in the Employment Court doing one or more of the things specified in s 140(6) of the Act, including imposing a term of imprisonment of up to three months, a fine of up to \$40,000 and/or sequestering property.

[41] Failure by Ms Hayden to pay the wages and other money she has been ordered to pay Mr Bloomfield may result in him applying to the Authority for a compliance order against her personally.

What if any costs should be awarded?

[42] Mr Bloomfield as the successful party is entitled to recover his filing fee of \$71.56. Because Ms Hayden has advised Mr Bloomfield that Ten Group is in liquidation (even though it isn't yet), it is appropriate that Ms Hayden reimburses Mr Bloomfield the full filing fee.

[43] Accordingly, within 28 days of the date of this determination Ms Hayden is ordered to pay Mr Bloomfield \$71.56 to reimburse his filing fee.

Summary of orders

[44] The Authority summarises the orders it has made in this determination as:

- (a) Within 14 days of the date of this determination Ten Group is ordered to pay Mr Bloomfield \$24,512.36;
- (b) Within 14 days of the date of this determination Ten Group is to pay Mr Bloomfield the interest on his wage arrears of \$19,764.59 that he was awarded in paragraph [17] of the Authority's substantive determination;
- (c) This award of interest on \$19,764.59 to be paid by Ten Group is to run from 31 October 2019 to 23 January 2020;
- (d) If the full amounts Ten Group has been ordered to pay Mr Bloomfield in (a) – (c) above have not been paid within 14 days of the date of this determination, then Ms Hayden is ordered to personally pay \$22,440.80 (being \$24,512.36 Ten Group was ordered to pay less \$2,071.56 for the penalty and filing fee) plus all of the interest that Ten Group was ordered to pay Mr Bloomfield;
- (e) Ms Hayden must pay the full amounts in (d) above within 28 days of the date of this determination;

- (f) Within 14 days of the date of this determination Ms Hayden is ordered to pay Mr Bloomfield \$71.56 to reimburse his filing fee;
- (g) Ms Hayden is also ordered to pay Mr Bloomfield interest on the amount of \$22,440.80 from 24 January 2020 (being the day after Ten Group was due to have paid this amount to Mr Bloomfield, as per the substantive determination) until this amount has been paid in full;
- (h) Interest that has been awarded to Mr Bloomfield by the Authority is to be calculated using the Civil Debt Interest Calculator that can be found on the Ministry of Justice's website, www.justice.govt.nz.

Rachel Larmer
Member of the Employment Relations Authority