

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 289
3101912

BETWEEN	PALAV BRAHMBHATT First Applicant
AND	HARDIK GEDIYA Second Applicant
AND	MANINDER SINGH Third Applicant
AND	HEMANT DHAMIJA Fourth Applicant
AND	BHUMIKA KOHLI First Respondent
AND	NZ CLEAN MASTER 2013 LIMITED Second Respondent

Member of Authority: Robin Arthur

Representatives: David Fleming, counsel for the Applicants
David Jaques, counsel for the Respondents

Investigation: On the papers

Determination: 27 July 2020

DETERMINATION OF THE AUTHORITY

- A. By order made under s 137 of the Employment Relations Act 2000 and by no later than 14 days from the date of this determination:**
- (i) New Zealand Clean Master 2013 Limited (NZCM) must pay the amount due as wage arrears to each applicant under the order made in the Authority's determination of 30 August 2019;**

[3] NZCM and Ms Kohli filed a challenge in the Employment Court to both determinations. They also sought a stay of execution of the Authority's orders. On 2 March 2020 the Court granted a stay on the condition that NZCM pay in to the Court a sum equivalent to the amounts that the Authority had ordered be paid as wage arrears, penalties, costs and expenses.³ The Court also granted a request from the applicants (who were the defendants in the court proceeding) that NZCM and Ms Kohli should pay \$10,000 in to the Court as security for costs in that forum. Until the security amount was paid, the Court stayed the challenge.

[4] The amounts ordered in relation to the stay and the security for costs were due to be paid in to the Court within 14 days of the court's orders being made but NZCM and Ms Kohli did not pay them. As a result, the conditional stay on executing the Authority's orders lapsed and the challenge of NZCM and Ms Kohli remained stayed unless the security amount was paid.

[5] This left the applicants in the position that they could proceed to enforce the orders made in the Authority's determinations. They applied to the Authority for compliance orders, orders for interest on the amounts due and for leave to pursue Ms Kohli personally for the wage arrears if NZCM did not pay them.

[6] NZCM and Ms Kohli did not lodge a statement in reply to this application. They did attend mediation but the matter was not resolved there. By consent this application has now been determined on the papers. Through counsel, at a case management conference held on 24 July 2020, the respondents declined an opportunity to provide any further information or submissions before a determination was made. Their counsel said they were not in a financial position to proceed with their challenge in the Court and they could not oppose enforcement of the Authority orders. Although the applicants could have proceeded to enforce the Authority's earlier orders directly through the District Court's procedures, counsel for the applicants advised they had asked for compliance orders so they would have an additional option of seeking further orders in the Employment Court if the respondents failed to comply with any compliance order made by the Authority.⁴

³ *Kohli v Brahmhatt* [2020] NZEmpC 20.

⁴ Employment Relations Act 2000, s 141 and s 138(6).

Compliance orders

[7] The respondents have not paid the wage arrears, penalties and costs ordered by the Authority. The compliance orders sought by the applicants are appropriate and have been made as set out in order labelled A at the beginning of this determination. Failure to comply with those orders will give the applicants the option of asking the Employment Court to make further orders which could include imposing fines, sequestering property or ordering imprisonment.⁵

[8] The amounts due under the Authority's earlier orders and, now, these compliance orders comprise:

- (i) wage arrears of \$70,908.02 (gross) to Palav Brahmhatt; \$5,634.13 (net) to Maninder Singh; \$4,284.82 (net) to Hemant Dhamija and \$12,933.02 (gross) to Hardik Gediya.
- (ii) a penalty of \$20,000 imposed on NZCM for breaching the applicants' employment agreements and a penalty of \$10,000 imposed on Ms Kohli for aiding and abetting those breaches; and
- (iii) costs and expenses of \$10,571.56.

Interest

[9] The wage arrears and penalties ordered by the Authority were due to be paid by no later than 28 September 2019. The costs and expenses were ordered to be paid no later than 28 October 2019. As a result of NZCM's failure to pay the amounts due the applicants have been deprived of the use of money they were entitled to have by those required dates. An order for interest on those amounts was fit.⁶ It is made as set out in the order labelled B at the beginning of this determination. Calculation of the amount to be paid as interest should be made using the Civil Debt Interest calculator.⁷

Leave to recover wages arrears from Ms Kohli

[10] As Ms Kohli was found to be a person involved in breach of employment standards, s 142Y of the Act allowed the applicants to seek leave to recover from her personally whatever amount of the wage arrears NZCM has been ordered to pay but is

⁵ Employment Relations Act 2000, s 140(6).

⁶ Employment Relations Act 2000, Schedule 2 clause 11.

⁷ www.justice.govt.nz/fines/civil-debt-interest-calculator.

unable to pay. The applicants have sought such leave. Ms Kohli provided no sufficient reason to refuse their request.

[11] NZCM's entry in the Companies Office register at the date of issue of this determination recorded that the Registrar of Companies had initiated action to remove the company from the register. NZCM last lodged an annual return in January 2019. An affidavit Ms Kohli filed in the Employment Court in November 2019 said neither she nor NZCM were in "a very high cash position" at the time, with the majority of their equity in assets. She said NZCM's assets in March 2018 were worth \$67,270.

[12] Ms Kohli is the director of the company. She was responsible for the decisions and business operation that led to the applicants being paid less than they were entitled to receive. In those circumstances s 142W and s 142Y of the Act provide for Ms Kohli to be personally liable for the wage arrears caused by those breaches. The leave sought has been granted as set out in the order labelled C at the beginning of this determination.

Costs

The applicants sought a contribution to their costs of representation incurred in bringing this application to the Authority. The appropriate award in this case was the equivalent of one quarter of the Authority's notional daily tariff, along with an order for reimbursement of the expense of the filing fee. As recorded in the order labelled D at the beginning of this determination NZCM and Ms Kohli are jointly and severally liable to pay the applicants the further sum of \$1,196.56, as a contribution to their costs of representation and expenses for this successful application.

Robin Arthur
Member of the Employment Relations Authority