

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2020] NZERA 348  
3110637

BETWEEN

TUNUHIA TUPE  
Applicant

AND

THE BOARD OF TRUSTEES  
OF TE MANAWA O TUHOE  
TRUST  
Respondent

Member of Authority: Eleanor Robinson  
Representatives: Stan Austin, advocate for Applicant  
Beverley Edwards, counsel for Respondent  
Investigation Meeting On the papers  
Determination: 28 August 2020

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**DETERMINATION OF THE AUTHORITY**

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**Application for compliance order**

[1] The Applicant, Mr Tunuhia Tupe, has applied to the Authority under s 137 of the Employment Relations Act 2000 (the Act) for an order requiring the Respondent, The Board of Trustees of Te Manawa O Tuhoe Trust (TMOT), to comply with the terms of the determination given by the Authority (Determination [2020] NZERA 132).

[2] In the determination which was issued on 31 March 2020, the Authority ordered the interim reinstatement of Mr Tupe to his position of Operations Manager with effect from the next working day after the date of the determination i.e. on 1 April 2020.

[3] Mr Tupe claims that although he returned to work in the position of Operations Manager at TMOT as soon as was reasonably practical, and has since performed his duties in that position diligently, TMOT has not communicated with him regarding the order of interim reinstatement, and has not resumed payment of his salary.

[4] TMOT claims that it understood that because Mr Tupe was employed by National Logging Limited (NLL), a wholly owned subsidiary of the Trust, this would satisfy the determination of the Authority.

#### **Note**

[5] The parties agreed to the Authority determining this issue based on the Statement of Problem and the Statement in Reply, and on affidavits and submissions from the parties.

#### **Relevant Facts**

[6] Mr Tupe had been employed in the position of Operations Manager in July 2018 until his employment was terminated by TMOT on 20 January 2020. His interim reinstatement to the Operations Manager position was ordered by the Authority to take effect on 1 April 2020.

[7] From the date of the determination, Mr Tupe resumed his duties as Operations Manager of TMOT in compliance with the order of the Authority, however his salary has been paid by NLL because TMOT has not complied with the determination of the Authority by reinstating Mr Tupe to the TMOT payroll.

[8] Mr Maaka Te Moana, Trustee and Chairman of Directors of NLL, confirms by way of affidavit evidence that TMOT and NLL do not operate joint or common bank accounts for trading purposes. Throughout the period since 1 April 2020 Mr Tupe's wages have been paid by NLL from the bank account it operates alone.

[9] TMOT confirms that it will comply with the order of the Authority to reinstate Mr Tupe to the position of Operations Manager and that administrative payment of his salary will be restored to that of TMOT as the 'Employer' with immediate effect.

[10] I note that Mr Tupe is not seeking repayment by TMOT to NLL of the monies paid by NLL from 1 April 2020 to the date Mr Tupe is restored to the TMOT payroll.

#### **Compliance Order**

[11] I am satisfied from the affidavit evidence filed that TMOT has not complied with the terms of the Authority's determination of 31 March 2020.

[12] TMOT has confirmed that it will immediately comply with determination [2020] NZERA 132, but to confirm for the sake of clarity: TMOT is ordered to comply with the Authority's order by reinstating Mr Tupe to his position as Operations Manager on an interim basis pending the determination of the substantive matter with effect from the date of this determination unless that has already occurred.

*Filing Fee*

[13] TMOT is also to pay \$71.56 to Mr Tupe, being the fee for the application for the Compliance Order.

*Penalty*

[14] Mr Austin on behalf of Mr Tupe has applied for a penalty, however breach of an Authority determination ordering remedies does not fall under s 134A.

*Effect of further non-compliance*

[15] TMOT is advised that if it does not observe or comply with this Compliance Order then Mr Tupe may apply to the Employment Court which may do 1 or more of the following pursuant to s 140 (c ) and (d) of the Act:

(c ) order that the person in default be sentenced to imprisonment for a term not exceeding 3 months;

(d) order that the person in default be fined a sum not exceeding \$40,000;

(e ) order that the property of the person in default be sequestered.

**Costs**

[16] Costs are reserved pending final determination of this matter.

**Next Steps**

[17] As previously advised, the Authority will convene a case management conference to set timetable directions for the investigation of Mr Tupe's substantive claims.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**