

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2020] NZERA 441  
3071772

BETWEEN            TONY GORE  
                                 Applicant  
  
AND                    COLOR IT (2010) LIMITED  
                                 Respondent

Member of Authority:     Michele Ryan  
  
Representatives:            Adrian Plunkett, advocate for the Applicant  
                                 Ben Sheehan and Joshua Pietras, counsel for the  
                                 Respondent  
  
Investigation Meeting:     On the papers  
  
Submissions [and further    2 March 2020 from the Respondent  
Information] Received:     8 March 2020 from the Applicant  
  
Date of Determination:     23 October 2020

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     Tony Gore was employed by the respondent for approximately eight years until 28 March 2019. I have referred to the respondent as “Color It”.

[2]     At the time Mr Gore’s employment began he enrolled in KiwiSaver.

[3]     Sometime in early October 2011 Color It ceased making KiwiSaver contribution deductions from Mr Gore’s fortnightly wages. This is said to be due to an administrative error caused by the respondent’s external payroll service provider. The effect of that action caused the employer’s KiwiSaver contributions to also be halted.

[4] The error went undetected until November 2014. The parties then discussed what should occur as a consequence of that matter but the issue was not progressed.

[5] After his employment with Color It ended Mr Gore sought advice on the matter. Shortly thereafter a statement of problem was lodged with the Authority.

### **The Authority's investigation and the claim:**

[6] The Authority and the parties have engaged in several case management conference calls with the Authority following receipt of the statement of problem on 21 August 2019.<sup>1</sup>

[7] Initially Mr Gore claimed for remedies associated with an unjustified disadvantage personal grievance and also sought a penalty. Both these claims were effectively withdrawn where each was raised outside the statutory timeframe for which each claim should be made.<sup>2</sup> In accordance with s 142 of the Employment Relations Act Mr Gore's claim for reimbursement of KiwiSaver payments was modified and now concerns only those payments omitted after 21 August 2013.

[8] An investigation meeting was initially scheduled for 15 April 2020 however following the exchange of information it was agreed the matter could be determined on the papers.

[9] This determination has been issued outside the timeframe set out at s 174C(3)(b) Employment Relations Act (the Act). The Chief of the Authority has decided exceptional circumstances existed as providing cause for the delay.<sup>3</sup>

### **Orders**

[10] The following orders resolve the quantum of moneys owed to Mr Gore as regards his KiwiSaver account. If it has not already done so Color It Limited is to pay the sum of \$3,212.55 to IRD for placement into Mr Gore's KiwiSaver account.

[11] The sum ordered by the Authority comprised the following:<sup>4</sup>

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<sup>1</sup> 3 October 2019, 8 November 2019, 17 January 2020, 24 February 2020.

<sup>2</sup> Section 114(1) and s 135(5) of the Employment Relations Act 2000 respectively

<sup>3</sup> Employment Relations Act 2000, s 174C(4)

<sup>4</sup> Interest on the varying components of Mr Gore claim are have been calculated by applying the Civil Debt Interest Calculator available at the Ministry of Justice website.

- (a) \$521.42 for missed KiwiSaver contributions for the period between 21 August 2013 and 30 June 2014.  
Interest accrued on this sum for the period 1 July 2014 until 2 March 2020 is \$114.95;
- (b) \$237.02 for missed Government KiwiSaver contributions for the period between 1 July 2014 and 25 January 2015.  
Interest accrued on this sum for the period 1 July 2014 until 2 March 2020 is \$40.54;
- (c) \$862.75 for unpaid employer KiwiSaver contributions (pre-ESCT) from 29 August 2013 until 27 March 2014.  
Interest accrued on this sum for the period 27 March 2014 until 2 March 2020 is \$200.92.<sup>5</sup>
- (d) The sum of \$1,035.76(\$1,251.36 less ESCT of \$215.60) as unpaid employer KiwiSaver contributions (post-ESCT) from 10 April 2014 until 25 January 2015.  
Interest accrued on this sum for the period 25 January 2015 until 2 March 2020 of \$199.19.

[12] Costs are reserved.

Michele Ryan  
Member of the Employment Relations Authority

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<sup>5</sup> The Respondent calculated the interest accrued for this component as \$198.28, however using the Civil Debt Interest Calculator the Authority calculates this sum to be \$200.92

