

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 261
3133697

BETWEEN	LOGYNN ANDREW-BISHOP Applicant
AND	ELITE HOSPITALITY MANAGEMENT LIMITED t/a Picnic Café Rotorua Respondent

Member of Authority:	Eleanor Robinson
Representatives:	Applicant in person Jianxun Liu, director of the Respondent
Investigation Meeting	On the papers
Submissions received:	06 June 2021 from the Respondent 08 June 2021 from the Applicant
Determination:	18 June 2021

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] The Applicant, Ms Logynn Andrew-Bishop, has applied to the Authority under s 137 of the Employment Relations Act 2000 (the Act) for an order requiring the Respondent, Elite Hospitality Management Limited (EHML), to comply with the determination given by the Authority.

[2] In the determination issued on 2 March 2021 ([2021] NZERA 80), the Authority ordered EHML to pay Ms Andrew-Bishop the sums of \$232.44 in respect of lost wages, \$18.60 in respect of holiday pay, \$1,500.00 in respect of compensation, and the Authority's filing fee of \$71.56.

[3] Ms Andrew-Bishop claims that she has not been paid the full sum ordered by the Authority. She has been paid \$251.04 by EHML but the sum of \$1,571.56 is still outstanding.

Submissions of the Parties

[4] Mr Liu submits on behalf of EHML that it was unable to obtain helpful official advice on the implications of Covid-19 and the effect on its business. It was always prepared to fulfil its obligations towards Ms Andrew-Bishop but it was unsure what it was required to pay until the determination of the Authority.

[5] It is submitted that EHML is prepared to pay the amounts awarded in respect of lost wages, but is only prepared to pay a reduced sum from that awarded by the Authority as compensation because it submits that EHML also has suffered hurt and humiliation. In addition the café business was sold as a result of the impact of Covid-19, and it incurred a large loss.

[6] Ms Andrew-Bishop submits that she was able to obtain clear advice from the government departments with whom she made contact, and does not accept that EHML was unable to do so. She submits that the actions of Mr Liu which have included the advice that EHML would be challenging the Authority's determination, have caused her ongoing humiliation.

[7] I accept that Covid-19 created challenges for many businesses, but this did not lessen the obligation on affected businesses to act fairly towards their employees. Moreover the determination of the Authority made clear what EHML was to pay Ms Logynn-Bishop and its failure to do so is therefore inexplicable. It is not acceptable that EHML has failed to do as ordered.

Compliance Order

[8] I am satisfied that EHML has not complied with the terms of the Authority's determination of 2 March 2021. It is just in the circumstances for an order to be made requiring EHML to comply with the determination.

[9] EHML is ordered to pay Ms Andrew-Bishop the outstanding sum of \$1,571.56 pursuant to the Authority's determination [2021] NZERA 80 within 14 days of the date of this determination.

Penalty

[10] Ms Andrew-Bishop has applied for compensation, however breach of an Authority determination ordering remedies does not fall under s 134A, but is a matter in which interest may be awarded for non-compliance.

[11] Accordingly I have so ordered.

Interest

[12] The default in failing to pay the ordered amounts pursuant to determination [2021] NZERA 80 has caused Ms Andrew-Bishop ongoing humiliation and I consider it is appropriate that EHML is ordered to pay interest on the outstanding sums owed to Ms Andrew-Bishop.

[13] EHML is to pay interest at the rate prescribed in the Interest on Money Claims Act 2016 on the outstanding sums due to Ms Andrew-Bishop from the date of determination until the amounts owed are paid in full.

Filing Fee

[14] EHML is also to pay \$71.56 to Ms Andrew-Bishop the fee on the application for the Compliance Order.

Effect of further non-compliance

[15] EHML is advised that if it does not observe or comply with this Compliance Order the Employment Court may do 1 or more of the following pursuant to s 140 (6) 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] Ms Andrew-Bishop represented herself and there is no order for costs.

Eleanor Robinson
Member of the Employment Relations Authority