

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2021] NZERA 504  
3146481

BETWEEN                      KYLIE MCMILLAN  
Applicant

AND                              RESQUE CORPORATION 20/20  
LIMITED  
Respondent

Member of Authority:        David G Beck

Representatives:             Peter Williams, counsel for the Applicant  
Daniel Parrett for the Respondent,

Investigation Meeting:      21 October 2021 by teleconference

Submissions Received:      21 October 2021 from the Applicant  
None from the Respondent

Date of Determination:      15 November 2021

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]        Kylie McMillan applied to the Authority for an order pursuant to section 137(1)(a)(iii) Employment Relations Act 2000 (“the Act”) requiring Resque Corporation 20/20 Limited (Resque) to comply with the terms of a settlement agreement. The settlement agreement in dispute was signed by both parties and an MBIE mediator pursuant to s 149 of the Act on 15 April 2021. It provided Ms McMillan be paid “on or before June 14, 2021”:

- (i) outstanding wages owed and holiday pay in the sum of \$26,000 gross;

(ii) a contribution to legal costs in the amount of \$2,000 plus GST.

[2] Mr Williams asserted that the above amounts have to date not been paid in full and as remedies Ms McMillan seeks:

- a compliance order; and
- costs.

### **The Authority Investigation**

[3] At the investigation meeting I heard from Ms McMillan and Mr Parrett, the sole director of Resque.

[4] Pursuant to s 174E of the Employment Relations Act 2000 (“the Act”), I make findings of fact and law, outline conclusions to resolve the disputed issue, and make orders but I do not record all evidence.

[5] Mr Parrett said his company had insufficient funds to comply with the terms of settlement due to a family relationship dispute that arose shortly after he signed the agreement on the company’s behalf, but he anticipated he could meet the outstanding amounts by early December due to an anticipated tax refund. Mr Parrett suggested he was able to resolve the matter by an instalment payment plan but he did not disclose any proposal.

[6] Ms McMillan detailed the stress she was experiencing at not having closure on this matter and the costs incurred in pursuing compliance. Mr Williams detailed efforts made to resolve the outstanding payments.

[7] It was agreed that I place a hold on issuing a determination to allow the parties further time to negotiate. A deadline of 22 October 2021 was set to conclude this process. Subsequently the parties were unable to resolve the matter and Mr Williams requested I proceed to make a determination.

## **Order for Compliance**

[8] The terms of settlement are clear that Resque Corporation 20/20 Limited must provide Ms McMillan with specified compensatory amounts of lost wages and holiday pay and a contribution to her legal costs and has not done so without a satisfactory explanation.

## **Finding**

[9] The compliance order sought by Kylie McMillan is appropriate and I grant it on the following terms.

## **Compliance order**

[10] Pursuant to s 137(iii) of the Employment Relations Act 2000 I order that Resque Corporation 20/20 Limited pay to Kylie McMillan within fourteen days of the date of this determination, the following sums:

- (i) \$26,000 gross with deductions for PAYE and Kiwi-saver.
- (ii) A \$2,000 plus GST contribution to legal costs.

## **Costs**

[11] Costs are at the discretion of the Authority and here Kylie McMillan was successful in her action for a compliance order and has sought a costs contribution. In the circumstances, exercising the discretion of the Authority, I fix that at \$600 for these proceedings and order Resque Corporation 20/20 Limited to pay this to Kylie McMillan and to reimburse her the Authority filing fee in the amount of \$71.56.

**David G Beck**  
**Member of the Employment Relations Authority**