

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2022] NZERA 67  
3148221

BETWEEN                      MURRAY COUSENS  
Applicant

AND                              STAR NELSON HOLDINGS  
LIMITED  
First Respondent

AND                              STUART DALE BIGGS  
Second Respondent

Member of Authority:        David G Beck

Representatives:             Paul Mathews, Advocate for the Applicant  
No appearance from the Respondents

Investigation Meeting:      2 March 2022 by videoconference

Submissions Received:      2 March 2022 from the Applicant  
None from the Respondent

Date of Determination:      3 March 2022

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]        Murray Cousens has indicated that the first respondent, Star Nelson Holdings Limited has to date, failed to comply and meet monetary awards made in Ms Cousens' favour including costs and a penalty as summarised in a determination of the Authority of 15 February 2021.<sup>1</sup>

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<sup>1</sup> *Cousens v Star Nelson Holdings Limited* [2021] NZERA 52

Mr Cousens attempt to enforce the determination is already the subject of a compliance order under s 137 of the Employment Relations Act 2000 (the Act) of 19 July 2021. <sup>2</sup>

[2] Further, this matter is also the subject of an oral Employment Court judgment of Judge Smith, issued on 24 February 2022 involving the same parties in which Star Nelson Holdings Limited has been fined \$10,000 pursuant to s 140(6) of the Act for non-compliance with the cited Authority decisions. <sup>3</sup>

[3] Mr Cousens in this application, has sought a direction from the Authority that the second respondent, Stuart Dale Biggs, sole director of Star Nelson Holdings Limited, takes active steps to ensure that the aforementioned Authority determinations are complied with pursuant to section 137(2) Employment Relations Act 2000 (“the Act”) and in accord with Judge Corkill’s Employment Court decision of *Allen Chambers Ltd v Pelabon*. <sup>4</sup>

[4] Mr Biggs did not participate in these proceedings or in the recent court proceedings and the matter has a long history of such non-participation. I am satisfied Mr Biggs was served with notice of the proceedings and had ample opportunity to participate. Mr Biggs has chosen not to respond and, in my view, he has taken steps to actively avoid his responsibilities as a company director.

### **The Authority Process**

[5] Pursuant to s 174E of the Act I make findings of fact and law, outline conclusions on matters to resolve the disputed issue under s 137(2) of the Act and make orders but I do not record all evidence and submissions received.

[6] Due to Covid restrictions and to allow Mr Biggs a greater opportunity to participate as he is based in Nelson, the Authority conducted a brief investigation meeting via a Zoom link. I heard evidence from Mr Cousens on the ongoing impact on his financial circumstances and stress caused to him in pursuing his legitimate awards. I also received a brief legal submission from Mr Mathews.

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<sup>2</sup> *Cousens v Star Nelson Holdings Limited* [2021] NZERA 305.

<sup>3</sup> *Murray Cousens v Star Nelson Holdings Limited and Stuart Biggs* [2022] NZEmpC 30.

<sup>4</sup> *Allen Chambers Ltd v Pelabon* [2019] ERNZ 64, (2019) 16 NZELR 541.

## **Issues**

[7] The Authority, in order to make a direction under s 137(2) of the Act, must be convinced that the second respondent, Mr Biggs, can exercise a sufficient degree of control over Star Nelson Holdings Limited so that it is appropriate to order that he takes steps to ensure the company meets its obligations to make the payments of outstanding awards to Mr Cousens.

[8] The Authority has the discretion to make a direction despite Mr Biggs not being in an employment relationship with Mr Cousens.<sup>5</sup>

## **Mr Biggs' role**

[9] Mr Cousens' advocate drew attention to the fact that Mr Biggs is the sole director of Star Nelson Holdings Limited and the only person Mr Cousens had knowledge of as 'owning and running the company'. Mr Biggs is the only person to be in a position to direct the company to meet its obligations. In the absence of any evidence to the contrary from Mr Biggs, I conclude that this is the case and I find that it is in the interests of justice to direct him to take steps to ensure the obligations owed by Star Nelson Holdings Limited to Mr Cousens are met. In doing so, whilst this is not a determination that Mr Biggs is personally liable, I remind him that a failure to effect Star Nelson Holdings Limited's obligations to meet long overdue payments arising out of the employment relationship could lead to Mr Biggs being fined up to \$40,000 and/or a term of imprisonment "not exceeding 3 months" and/or property of Mr Biggs being "sequestered" as per s 140(6)(c),(d) and (e) of the Act.<sup>6</sup>

## **Summary s 137(2) direction**

[10] Pursuant to s 137(2) of the Employment Relations Act 2000, I direct that the second respondent, Stuart Dale Biggs as an agent of the first respondent, takes steps to ensure that Star Nelson Holdings Limited pays Murray Cousens awarded monetary amounts outstanding identified in the Authority decisions of Member Beck, being *Murray Cousens v Star Nelson*

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<sup>5</sup> At [45] and [46].

<sup>6</sup> Section 140 (6) (c), (d) and (e) Employment Relations Act 2000.

*Holdings Limited* [2021] NZERA 52, 15 February 2021 and *Murray Cousens v Star Nelson Holdings Limited* [2021] NZERA 305 by no later than 5pm, Friday 25 March 2022.

### **Costs**

[11] Additional costs associated with the preparation of this application were sought and exercising the Authority's discretion I consider it is fair to order a contribution in the amount of \$500 and the filing application fee of \$71.56. Both amounts shall be paid by Stuart Dale Biggs to Murray Cousens on the basis that this application was primarily directed against Mr Biggs so that he takes steps to rectify non-compliance matters of Star Nelson Holdings Limited.

David G Beck  
Member of the Employment Relations Authority