

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 127
3202039

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| BETWEEN | DARREN BLOMFIELD Applicant |
| AND | E A ENERGY PLUS LIMITED First Respondent |
| AND | EDWARD DAVID HATCH Second Respondent |

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|------------------------|---|
| Member of Authority: | Alastair Dumbleton |
| Representatives: | Bruce Johnson, advocate for Applicant No appearance First or Second Respondent |
| Investigation meeting: | 13 March 2023 |
| Determination: | 17 March 2023 |

COMPLIANCE ORDER OF THE AUTHORITY

Compliance with Record of Settlement

[1] By Record of Settlement (ROS) dated 20 September 2022 entered into between the applicant and the first and second respondents, the applicant was entitled to receive \$55,364.16 from the respondents.

[2] The money was to be paid by 23 November 2022 and the respondents undertook that they would be jointly and severally liable to pay.

[3] The money was expressed in the ROS to be three months' salary and compensation for the applicant's constructive dismissal. Without receiving pay when it was due, Mr Blomfield had to finish the employment he had with the first respondent. The second respondent is a director of the first respondent company. He signed the ROS both for himself and on behalf of his company.

[4] The ROS was duly executed under s 149 of the Employment Relations Act 2000 and signed by a mediator. In signing the ROS the parties acknowledged they had had the opportunity to seek independent legal advice before doing so.

[5] The applicant was paid a total of \$2,000 on due date in accordance with the ROS but nothing further, leaving a balance of \$53,364.16 owing from 23 November 2022.

[6] The respondents have not taken any steps in opposition or reply to the application for compliance. The Authority is satisfied the respondents were notified of the case management conference held on 3 March 2023, and they were served with a Notice of Investigation Meeting at the registered office of the company and the home address of its director, the second respondent.

Compliance Order

[7] The Authority is satisfied on the application of Mr Blomfield that it should exercise its discretion pursuant to ss 137 and 138 of the Employment Relations Act 2000. The Authority now orders the first and second respondents to comply with paragraph 2 of the ROS by paying to the applicant \$53,364.16.

[8] The respondents are required to pay the money to the applicant **no later than seven (7) days after the date of service of this Compliance Order.**

[9] The amount is a not insignificant sum to find and pay within 7 days. On the other hand, the evidence of the applicant satisfies the Authority that the failure to pay his wages for three months caused him a not insignificant amount of upset and disruption to his life, with a mortgage to pay and other creditors to satisfy.

[10] The respondents have not participated in the investigation meeting and may be taken to have rejected the opportunity offered to them to claim impecuniosity or seek

terms for payment of the money owing. To the applicant, the second respondent presents outwardly at least as a person of considerable means. It is a major failing to deprive an employee of wages, especially for as long as three months. It is also relevant that the second respondent was not ordered to pay but voluntarily undertook to pay the entire amount of the ROS. The respondents must now deliver on their undertakings or be held accountable if they fail.

Section 140(6) of the Employment Relations Act 2000

[11] Any person who fails to comply with a compliance order may have a range of punitive orders made against them, as provided by s 140(6) of the Employment Relations Act. They include a fine of up to \$40,000 and imprisonment for up to 3 months, upon the Court being satisfied there has been such a failure.

Costs

[12] Pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000, the first and second respondent are to pay costs of \$1,300 and expenses of \$71.56, in total. Those amounts are for the investigation meeting held by the Authority and attended by the applicant and his advocate, and for the application fee paid to the Authority to secure the meeting.

Alastair Dumbleton

Member of the Employment Relations Authority