

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2023] NZERA 262
3223439

BETWEEN	TOVIO UGONE Applicant
AND	STAR MOVING LIMITED First Respondent
AND	STUART BIGGS Second Respondent

Member of Authority: Rowan Anderson

Representatives: Joshua Pietras, counsel for the Applicant
Stuart Biggs for the Respondent

Investigation Meeting: On the papers

Submissions received: 12 April 2023 and 11 May 2023 from the Applicant
No submissions from the Respondent

Determination: 24 May 2023

DETERMINATION OF THE AUTHORITY

Background and submissions

[1] On 3 February 2023 the Authority issued a determination (the Substantive Determination¹) in which I found that Tovio Ugone was unjustifiably dismissed by Star Moving Limited (Star Moving), and that Star Moving breached s 63(3) of the Employment Relations Act 2000 (Act).

[2] Costs were initially reserved, and I issued a costs determination (the Costs Determination²) on 13 March 2023 including an award of costs to Mr Ugone.

¹ *Tovio Ugone v Star Moving Limited* [2023] NZERA 55.

² *Tovio Ugone v Star Moving Limited* [2023] NZERA 116.

[3] Mr Ugone has lodged a statement of problem claiming that Star Moving has not complied with the Substantive Determination nor the Costs Determination, asking that compliance orders be made under ss 137(1) and 137(2) of the Employment Relations Act 2000 (the Act), and seeking interest of the amounts due.

[4] Neither Star Moving, nor Mr Stuart Biggs, the sole Director of Star Moving, have lodged a statement in reply.

The Authority's investigation

[5] Mr Ugone's statement of problem was lodged on 12 April 2023 and was subsequently served on Star Moving and Mr Biggs.

[6] On 26 April 2023 Mr Biggs emailed the Authority requesting an extension until August to lodge a statement in reply on the basis that he had been travelling, because he would be away most of May and June, and because his barrister was unavailable until August 2023. Mr Ugone opposed the extension sought and requested that the Authority make a determination 'on the papers'.

[7] No representative is on the record as acting for Star Moving or Mr Biggs, and Star Moving was represented by Mr Biggs in person in relation to the proceedings relating to the Substantive Determination. No other information in support of the extension request was provided.

[8] On 27 April 2023 the parties were advised that I was not satisfied that there was an appropriate basis for the extension sought and that any statement in reply should be lodged by 2 May 2023.

[9] Mr Biggs, on 27 April 2023, responded advising that he had only received the statement of problem on 26 April 2023, repeating his earlier assertion as to the unavailability of his barrister, and noting that he was away until 5 May 2023.

[10] Notwithstanding the Authority having received a report from New Zealand Post recording Mr Biggs as having signed for receipt of the relevant documents on 18 April 2023, Mr Biggs was provided a further opportunity to lodge a statement in reply, with the revised due date being 10 May 2023. Despite that revised timeframe, neither Star Moving nor Mr Biggs have lodged a statement in reply.

[11] On 12 May 2023, the Authority not having received any statement in reply, I issued directions noting that no statement in reply had been received, that as such there was an absence of any contest as to the alleged non-compliance that was the subject of the statement of problem, and that I was satisfied that it was appropriate that the matter be dealt with ‘on the papers’ on the basis of the information received by the Authority. The directions recorded that any objection to that proposed course was to be made by 22 May 2023 and that if there was no objection I would proceed on that basis and reserve my determination. No objection has been received.

Failure to comply with the Substantive Determination

[12] Mr Ugone submits that several demands have been made seeking payment of the sums the Authority ordered Star Moving to pay him in the Substantive Determination.

[13] Mr Ugone asserts that despite demands being made for payment, including on 1 March 2023 and 8 March 2023, that Star Moving has not paid the sums owing in accordance with the orders made. The statement of problem attaches the correspondence sent by email to Mr Biggs and Star Moving demanding payment.

[14] No statement in reply has been lodged and I am satisfied on the basis of the uncontested information provided by Mr Ugone that Star Moving is in breach of its obligation to make payment of the following sums as ordered in the Substantive Determination:

- (a) \$28,275.09 to Mr Ugone as compensation for lost wages under section 123(1)(b) of the Act;
- (b) \$842.25 for the employer Kiwisaver contributions on the lost remuneration pursuant to section 123(1)(b) of the Act;
- (c) \$27,500 to Mr Ugone as compensation for hurt and humiliation under section 123(1)(c)(i) of the Act;
- (d) \$6,000 in penalties, \$4,000 of which is to be paid into the Crown account via the Authority, and \$2,000 to Mr Ugone;
- (e) Reimbursement of the \$71.56 filing fee to Mr Ugone.

[15] I am also satisfied that there is no indication that Star Moving intends to comply with the Substantive Determination and that it is appropriate and necessary that a compliance order be made.

Failure to comply with the Costs Determination

[16] Mr Ugone submits that he has demanded payment of the costs award, but that despite that demand the costs award has not been paid. The statement of problem attaches the correspondence sent by email to Mr Biggs and Star Moving on 23 March 2023 demanding payment.

[17] No statement in reply has been lodged and I am satisfied based on the uncontested information provided by Mr Ugone that Star Moving is in breach of its obligation to make payment of the sum of \$5,250.00 to Mr Ugone as ordered in the Costs Determination.

[18] I am also satisfied that there is no indication that Star Moving intends to comply with the Costs Determination and that it is appropriate and necessary that a compliance order be made.

Compliance orders against Star Moving Limited

[19] Mr Ugone's application for compliance against Star Moving Limited is successful in relation to both the Substantive Determination and Costs Determination.

[20] I am also satisfied that Mr Ugone is entitled to the payment of interest on the sums owed and I award interest in relation to each of the sums in accordance with the Interest of Money Claims Act 2016.

[21] Interest on the sums due relating to the Substantive Determination is to be calculated from 3 March 2023 to the date on which payment in full is made. Interest on the sum due relating to the Costs Determination is to be calculated from 10 April 2023 to the date on which payment in full is made.

[22] Interest is to be calculated using the Ministry of Justice's "civil interest debt calculator".³

³ The calculator is available on the Ministry of Justice's website.

[23] Star Moving Limited is ordered to comply with the Substantive Determination, by Wednesday 7 June 2023, by making payment of the following sums (plus interest):

- (a) \$28,275.09 to Mr Ugone as compensation for lost wages under section 123(1)(b) of the Act;
- (b) \$842.25 for the employer Kiwisaver contributions on the lost remuneration pursuant to section 123(1)(b) of the Act;
- (c) \$27,500 to Mr Ugone as compensation for hurt and humiliation under section 123(1)(c)(i) of the Act;
- (d) \$6,000 in penalties, \$4,000 of which is to be paid into the Crown account via the Authority, and \$2,000 to Mr Ugone;
- (e) Reimbursement of the \$71.56 filing fee to Mr Ugone.

[24] Star Moving Limited is ordered to comply with the Costs Determination, by Wednesday 7 June 2023, by making payment to Mr Ugone of the sum of \$5,250 (plus interest) as a contribution towards the costs it incurred in defending his claim.

Compliance orders against Stuart Biggs

[25] Mr Ugone seeks a compliance order against Mr Biggs under s 137(2) of the Act, requiring him to make Star Moving comply with the Substantive Determination and the Costs Determination. I am satisfied that Mr Biggs, being the sole director of Star Moving, is responsible for the non-compliance and/or is in a position to prevent further non-compliance by Star Moving Limited.

[26] Stuart Biggs is ordered to take all necessary steps to ensure Star Moving Limited complies with the Substantive Determination and the Costs Determination, as specified in the compliance orders made against Star Moving Limited, by Wednesday 7 June 2023.

Costs

[27] Mr Ugone seeks an order for costs relating to the costs of his representation in bringing this compliance action.

[28] The Authority has discretion to award costs, may order any party to pay costs and expenses as it thinks reasonable, and may apportion such costs and expenses between the parties as it thinks fit.⁴

[29] I am satisfied that Mr Ugone has been put to unnecessary expense in seeking compliance against Star Moving. Counsel for Mr Ugone submits that the costs incurred by Mr Ugone, as of 11 May 2023, were \$950.00 (plus GST) as well as the \$71.55 filing fee.

[30] Having regard to the submissions and the Authority's daily tariff, I am satisfied that Mr Ugone is entitled to an award contributing to the costs of his representation. I order that Star Moving Limited pay Mr Ugone the sum of \$950 (plus GST) as a contribution towards the costs of his representation in bringing this compliance application. I order also order that Star Moving Limited pay Mr Ugone the sum of \$71.55 as reimbursement of the filing fee.

Warning to Star Moving Limited

[31] Failure by Star Moving Limited to comply with the Authority's compliance orders may result in Mr Ugone applying to the Employment Court for compliance, as permitted by s 138(6) of the Act, and for the Court to exercise its powers under s 140(6), which include a fine not exceeding \$40,000 or an order that the property of the person in default be sequestered.

Summary of orders

[32] Star Moving Limited is ordered to comply with the Substantive Determination⁵, by Wednesday 7 June 2023, by making payment of the following sums (plus interest):

- (a) \$28,275.09 to Mr Ugone as compensation for lost wages under section 123(1)(b) of the Act;
- (b) \$842.25 for the employer Kiwisaver contributions on the lost remuneration pursuant to section 123(1)(b) of the Act;
- (c) \$27,500 to Mr Ugone as compensation for hurt and humiliation under section 123(1)(c)(i) of the Act;
- (d) \$6,000 in penalties, \$4,000 of which is to be paid into the Crown account via the Authority, and \$2,000 to Mr Ugone;

⁴ Employment Relations Act 2000, Schedule 2, clause 15.

⁵ *Tovio Ugone v Star Moving Limited* [2023] NZERA 55.

(e) Reimbursement of the \$71.55 filing fee to Mr Ugone.

[33] Star Moving Limited is ordered to comply with the Costs Determination⁶, by Wednesday 7 June 2023, by making payment to Mr Ugone of the sum of \$5,250, plus interest, as a contribution towards the costs it incurred in defending his claim.

[34] Stuart Biggs is ordered to take all necessary steps to ensure Star Moving Limited complies with the Substantive Determination and the Costs Determination, as specified in the compliance orders made against Star Moving Limited, by Wednesday 7 June 2023.

[35] Star Moving Limited is ordered, by Wednesday 21 June 2023, to pay Mr Ugone the sum of \$950 (plus GST) as a contribution towards the costs of his representation in bringing this compliance application, and the sum of \$71.55 as reimbursement of the filing fee.

Rowan Anderson
Member of the Employment Relations Authority

⁶ *Tovio Ugone v Star Moving Limited* [2023] NZERA 116.