

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

**[2024] NZERA 262
3773439**

	BETWEEN	SCOTT FOTHERGILL Applicant
	AND	EV CHARGER SOLUTION LIMITED First Respondent
	AND	RONGZUN WANG Second Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Paul Mathews for the Applicant Rongzun Wang for the Respondents	
Submissions:	15 April 2024 from the Applicant None from the Respondent	
Investigation Meeting	On the papers	
Determination:	06 May 2024	

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] The Applicant, Mr Scott Fothergill, has applied to the Authority under s 137 of the Employment Relations Act 2000 (the Act) for an order requiring the Respondent, EV Charger Solution Limited, to comply with the terms of the determination given by the Authority: (Determination [2023] NZERA 614) and the subsequent costs determination (Determination [2023] NZERA 775).

[2] In the determination which was issued on 19 October 2023 ([2023] NZERA 614), and in a subsequent determination issued on 21 December 2023 ([2023] NZERA 775), the Authority ordered EV Charger Solution Limited to pay Mr Fothergill the following sums of money:

- (i) \$4,490.13 gross as lost wages pursuant to s 28(3) of the Act ([2023] NZERA 614);

(ii) \$8,000.00 as compensation pursuant to s 123(1)(c)(i) of the Act ([2023] NZERA 614); and

(iii) \$3,000.00 as legal costs pursuant to clause 15 of Schedule 2 of the Act ([2023] NZERA 775).

[3] On 17 January 2024 Mr Fothergill applied to the Authority for a Compliance Order, claiming that EV Charger Solution Limited had not paid him any of the monies to which he was entitled under the determinations.

Note

[4] No Statement in Reply was lodged by EV Charger Solution Limited, however Mr Wang, sole director and shareholder of EV Charger Solution Limited, did participate in a case management conference held on 26 February 2024.

[5] The parties agreed to the Authority determining this issue based on the Statement of Problem, and on submissions from the parties.

[6] Mr Fothergill has included Mr Wang as a respondent party in the compliance application, however the remedies and costs ordered in the determinations were awarded against EV Charger Solution Limited, and compliance can only be awarded in accordance with the determinations.

Compliance Order

[7] I am satisfied that EV Charger Solution Limited has not complied with the terms of the determinations issued by the Authority. It is just in the circumstances for an order to be made requiring EV Charger Solution Limited to comply with the determination.

Interest

[8] Mr Fothergill has applied for interest on the amount agreed to be paid by EV Charger Solution Limited.

[9] I consider it appropriate to order interest from the dates the amounts were due to be paid to Mr Fothergill. I consider that the dates taken should be 28 days from the date of the determinations i.e. 16 November 2023 and 18 January 2024.

[10] EV Charger Solution Limited is to pay interest at the rate prescribed in the Interest on Money Claims Act 2016 on the outstanding sum due to Mr Fothergill until the amounts owed are paid in full.

Filing Fee

[11] EV Charger Solution Limited is also to pay \$71.56 to Mr Fothergill in respect of the fee on the application for the Compliance Order.

Orders

[12] **EV Charger Solution Limited is ordered to pay Mr Fothergill the following amounts:**

- (i) **\$4,490.13 gross as lost wages pursuant to s 28(3) of the Act ([2023] NZERA 614);**
- (ii) **\$8,000.00 as compensation pursuant to s 123(1)(c)(i) of the Act ([2023] NZERA 614);**
- (iii) **\$3,000.00 as legal costs pursuant to clause 15 of Schedule 2 of the Act ([2023] NZERA 775).**
- (iv) **Interest is to be paid on the amounts of \$4,490.13 and \$8,000.00 gross (a total of 12,490.13 gross) from 16 November 2023 until the sums owed are paid in full;**
- (v) **Interest is to be paid on the amount of \$3,000.00 from 18 January 2024 until the sum owed is paid in full; and**
- (vi) **The filing fee of \$71.56.**

[13] EV Charger Solution Limited is to comply as ordered above within 28 days of service of this determination.

[14] Mr Wang is ordered to do everything in his power to ensure EV Charger Solution Limited complies with the Authority's determinations pursuant to s 137 (2) of the Act.

Costs

[15] This matter was determined on the papers, occupied a short investigation meeting and the costs are awarded in respect of this compliance application only.

[16] I order EV Charger Solution Limited to contribute \$750.00 towards Mr Fothergill's actual costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

[17] EV Charger Solution Limited is ordered to comply as ordered above within 28 days of service of this determination.

[18] Mr Wang is ordered to do everything in his power to ensure EV Charger Solution Limited complies with the Authority's determinations pursuant to s 137 (2) of the Act.

Eleanor Robinson
Member of the Employment Relations Authority