

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 450
3294640

BETWEEN	KAYLA JADE BISHOP Applicant
AND	CHARCOAL CHICKEN 2020 LIMITED First Respondent
	SAIF ISMAIL Second Respondent

Member of Authority:	Marija Urlich
Representatives:	Andrea Kelleher, advocate for the Applicant Eshan Gupta, advocate for the Respondents
Investigation Meeting:	26 July 2024 by audio visual link
Submissions and information received:	At the investigation meeting
Determination:	26 July 2024

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Ms Bishop seeks compliance orders with determinations of the Authority dated 7 March 2024 and 22 April 2024 in which awards were made in her favour.¹ She also seeks an award of interest on the unpaid awards and costs.

[2] Charcoal Chicken 2020 Limited (CCL) says trading has been difficult, it has been unable to pay the awards made against it but has deposited \$400 into Ms Bishop's

¹ *Kayla Bishop v Charcoal Chicken 2020 Limited & Anor* [2024] NZERA 136 and *Kayla Bishop v Charcoal Chicken 2020 Limited & Anor* [2024] NZERA 230.

bank account this morning. Mr Ismail says no compliance order can be made against him because he was not made liable for any order in the subject determinations.

The Authority's investigation

[3] With the agreement of the parties the investigation meeting was held by audio visual link at which information and submissions were provided.

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all the information and submissions received.

Should a compliance order be made against CCL?

[5] The information before the Authority establishes Ms Bishop has not received any payment from CCL of the awards made in her favour in the determinations being:

- (i) \$18,000 (gross) under s 123(1)(c)(i);
- (ii) \$2,265.65 (gross) under s 123(1)(b);
- (iii) \$137.50 (gross) in wage and holiday pay arrears;
- (iv) calculate and pay alternative holiday pay for 1 January 2022;
- (v) calculate and pay interest on total arrears;
- (vi) \$6,000 penalty half of which is to be paid to Kayla Bishop and half to the Crown; and
- (vii) \$12,891 costs award including disbursements.

[6] CCL's payment of the awards has been outstanding for over four months, it has given no indication of an intention to pay, at least up to today and not applied for payment by instalment.² The delay in payment has required Ms Bishop to take enforcement proceedings which I am satisfied has placed financial and emotional stress on her and her family. The \$400 paid into Ms Bishop's bank account this morning was not sufficiently annotated to understand what part of the outstanding awards this payment may satisfy. This is a matter between the parties with leave given to provide further information if they are unable to resolve the payment's relevance.

² Employment Relations Act 2000, s 138(4A).

[7] Having considered and weighed all the relevant factors, it is appropriate to exercise my discretion under s 137(1)(b) of the Act to order compliance with the awards contained in the determinations referred to in paragraph [1] above.

[8] Within 14 days of the date of this determination Charcoal Chicken 2020 Limited is ordered to comply with those determinations and pay Kayla Jade Bishop the awards contained therein as set out at paragraph [5] above.

[9] Certificates of determination for the determinations referred to in paragraph [1] are to be issued forthwith.

Should a compliance order be made against Mr Ismail?

[10] No. There are no orders against Mr Ismail for which a compliance order could be made.

Interest

[11] Ms Bishop seeks interest on the money awards made in her favour. The Authority has the power to award interest under clause 11 of the Second Schedule of the Act. Interest is to reimburse someone for the loss of use of monies to which there is an established entitlement.

[12] It is appropriate where a person has been deprived of the use of money to make an award for interest. Charcoal Chicken 2020 Limited is ordered to calculate and pay interest within 14 days of the date of this determination on the remedies awarded under s 123 and the costs award. An order for interest on the penalty is not appropriate and calculation and payment of interest on the wage and holiday pay areas has been ordered.

[13] Interest is to be calculated from the date of this determination until the sums ordered are paid in full.

[14] Interest is payable in accordance with Schedule 2 of the Interest on Money Claims Act 2016. A calculator to assist in the calculation of interest is available on the Ministry of Justice website.

Outcome

[15] Within 14 days of the date of this determination Charcoal Chicken 2020 Limited must comply with the determinations *Kayla Bishop v Charcoal Chicken 2020 Limited & Anor* [2024] NZERA 136 and *Kayla Bishop v Charcoal Chicken 2020 Limited & Anor* [2024] NZERA 230 and pay Kayla Jade Bishop the awards made in her favour.

[16] Charcoal Chicken 2020 Limited must calculate and pay interest on the s 123 remedies and costs awards for which compliance orders have been made from date of this determination until those sums are paid in full.

[17] Certificates of determination for *Kayla Bishop v Charcoal Chicken 2020 Limited & Anor* [2024] NZERA 136 and *Kayla Bishop v Charcoal Chicken 2020 Limited & Anor* [2024] NZERA 230 are to be issued forthwith.

Costs and disbursements

[18] Ms Bishop has incurred costs in seeking to enforce the order made in her favour. She is the successful party and is entitled to a contribution to the actual costs of professional representation. When the Authority considers costs, it exercises a discretion. In exercising that discretion, it does so in a principled way. Costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct. In the Authority, costs are usually awarded on the basis of a daily tariff.³ This matter was able to be investigated by audio-visual link and took hearing time of less than ½ an hour.

[19] Ms Bishop is entitled to a contribution to the costs of representation incurred in seeking compliance which included the preparation the application, provision of written information, preparation and attendance at the investigation meeting. A fair and reasonable award of costs is \$300 given the information as to actual costs incurred which are modest given the work involved. She is also entitled to be reimbursed the cost of the \$71.55 filing fee and the \$517.50 fee incurred in engaging a service agent to prepare and issue a payment demand on CCL.

³www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

[20] Charcoal Chicken 2020 Limited is to pay to Kayla Jade Bishop \$300 as a contribution towards costs and disbursements of \$589.05 within 14 days of the date of determination.

Marija Urlich
Member of the Employment Relations Authority