

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 49
3249579

BETWEEN	MICHAEL BYRNE First Applicant
AND	JOEL BYRNE Second Applicant
AND	KANALOA HAWAII SPORTS ENTERTAINMENT LIMITED Respondent

Member of Authority: Peter Fuiava

Representatives: Gerrad Brimble, counsel for the Applicants
No appearance by the Respondent

Investigation Meeting: On the papers

Submissions received: 5 September and 18 December 2023 from the Applicants

Determination: 31 January 2024

DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] The applicants seek a compliance order under s 137(1)(b) and s 137(2) of the Employment Relations Act 2000 (the Act) to enforce a determination issued by the Authority against Kanaloa Hawaii Sports Entertainment Limited (Kanaloa) on 19 July 2023 (the primary determination).¹ The issue for investigation and determination is whether a compliance order should be made against Kanaloa for breaching the primary determination which required it to pay the following:

- (i) \$69,709 (gross) to Michael Byrne in wage arrears under s 131 of the Act;

¹ *Michael Byrne & Joel Byrne v Kanaloa Hawaii Sports Entertainment Limited* [2023] NZERA 387.

- (ii) \$40,753 (gross) to Joel Byrne in wage arrears;
- (iii) interest on the above sums of money to each applicant from 2 November 2020 to date of payment using the civil debt interest calculator;² and
- (iv) \$18,000 to each applicant in compensation under s 123(1)(c)(i) for humiliation, loss of dignity and injury to feelings.

[2] Kanaloa was ordered to pay the above sums of money no later than 4 pm Thursday 17 August 2023, however nothing has been paid and the entire amount remains outstanding.

How has the Authority investigated?

[3] A copy of the applicants' statement of problem seeking a compliance order was sent to Kanaloa's registered office address. A case management conference by telephone was held on 17 November 2023 which the applicants' representative Mr Brimble attended but Kanaloa's sole director and chief executive Tracy Atiga, did not.

[4] Out of an abundance of caution, a copy of the statement of problem and the Authority's minute for the teleconference was sent to Ms Atiga's address as recorded in the Companies Register. I am satisfied that both she and her company are aware of the present proceedings but for reasons that remain unclear have not engaged with the process. It may be noted that Ms Atiga did engage with the earlier substantive investigation in which I found that her business had unjustifiably dismissed the applicants.

What has happened since the primary determination?

[5] As directed, Mr Brimble lodged and served with the Authority and Kanaloa a memorandum from the applicants (18 December 2023) that advised that Ms Atiga had confirmed by email that the full amount of remedies including costs would be paid to the applicants. Funds were to be paid into Mr Brimble's trust account but Kanaloa failed to pay the applicants by the due date as ordered by the Authority.

² www.justice.govt.nz/fines/civil-debt-interest-calculator

[6] Mr Brimble followed up with Ms Atiga who responded on 23 August that payment including interest would likely be remitted on 15 October 2023. Despite Mr Brimble seeking further clarification from Ms Atiga as to why her company was unable to pay the applicants their remedies before then, no further response has been received.

[7] There is no evidence or information indicating that the above sums of money that Kanaloa was ordered to pay the applicants have been paid. As permitted by s 174E of 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 evidence and submissions received.

Should the Authority make a compliance order against Kanaloa?

[8] The Authority may make a compliance order where any person has not observed or complied with any order, determination, direction, or requirement made or given under the Act by the Authority or by a member or officer of the Authority.³

[9] The primary determination has not been challenged and the orders made against Kanaloa remain valid and enforceable. Because the applicants have not received any of the remedies awarded to them by the Authority, I find no reason not to issue an order for compliance.

Summary of orders

[10] The Authority orders Kanaloa to comply with the primary determination by paying Michael and Joel Byrne the following amounts no later than 12 pm Friday 9 February 2024:⁴

- (i) \$69,709 (gross) to Michael Byrne in wage arrears under s 131 of the Act;
- (ii) \$40,753 (gross) to Joel Byrne in wage arrears;
- (iii) interest on the above sums of money to each applicant from 2 November 2020 to date of payment using the civil debt interest calculator;⁵ and

³ The Act, s 137(1)(b) and s 137(2).

⁴ The Act, s 137(3).

⁵ www.justice.govt.nz/fines/civil-debt-interest-calculator

- (v) \$18,000 to each applicant in compensation under s 123(1)(c)(i) for humiliation, loss of dignity and injury to feelings.

[11] Imposition of a compliance order is a serious matter. If Kanaloa fails to comply with this compliance order, the applicants may apply to the Employment Court for it to exercise its powers under s 140(6) of the Act.

What about costs?

[12] The applicants were denied the opportunity to apply to the Authority for costs for the substantive because Ms Atiga had volunteered to pay these together with the remedies awarded but she failed to do so in the end. As the successful party in both the substantive and present application for compliance, the applicants are entitled to costs which generally follow the event and are to be modest. To reduce costs, this determination has been done on the papers having regard to all the information and evidence before the Authority at the time of drafting.

[13] On 25 August 2023, the Authority released its consolidated Practice Direction which includes its approach to costs and the use of a notional tariff. The current daily tariff is \$4,500 for the first day of any matter and \$3,500 for any subsequent day. Various factors and principles may have the effect of increasing or decreasing the amount of costs awarded.⁶

[14] The Authority orders Kanaloa to pay the applicants total costs of \$5,500 (\$4,500 for the substantive and \$1,000 for the present application) and reasonable expenses of \$143.11 (filing fees of \$71.56 and \$71.55) which the applicants paid in order to lodge their two statement of problems in the Authority. Given the intervening months in which the applicants have not been paid, it is appropriate that Kanaloa pay these costs and expenses no later than 12 pm Friday 9 February 2024.

Peter Fuiava
Member of the Employment Relations Authority

⁶ <https://www.era.govt.nz/assets/Uploads/practice-direction-of-era.pdf>