

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 741  
3266379

BETWEEN

SUHEE LEE  
Applicant

AND

YAMAYA NZ LIMITED  
First Respondent

JUNG IM KANG  
Second Respondent

KYUNG KIM  
Third Respondent

Member of Authority: Marija Urlich

Representatives: Seungmin Kang, counsel for the Applicant  
Jung Im Kang and Kyung Kim, directors of the first  
Respondent

Investigation Meeting: On the papers

Submissions and 23 October 2024 from the Applicant  
information received:

Determination: 13 December 2024

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] In an application lodged on 4 December 2023 Suhee Lee seeks to enforce by way of compliance order, awards made in her favour against her former employer Yamaya NZ Limited (Yamaya) in determinations of the Authority issued on 2 October 2023 and 9 November 2023 (the determinations).<sup>1</sup> Ms Lee also seeks compliance orders

---

<sup>1</sup> *Suhee Lee v Yamaya NZ Ltd* [2023] NZERA 572 and *Suhee Lee v Yamaya NZ Ltd* [2023] NZERA 661.

against the directors of Yamaya, Jung Im Kang and Kyung Kim, who are non-parties to the determinations under s 137(2) of the Act. Interest, a penalty and costs are also sought.

### **The Authority's investigation**

[2] The application was served on the respondents at the address provided in the companies register at 9.54am on 23 December 2023. The respondents did not lodge statements in reply within the statutory timeframe or otherwise engage with the Authority.

[3] The application was then put on hold pending the outcome of a challenge lodged by Yamaya on 7 December 2023 to the instalment payment plan ordered by the Authority.<sup>2</sup> On 27 September 2024 Ms Lee, by way of her solicitor, advised the Authority Yamaya's challenge to the determination was concluded and requested the compliance application be progressed.

[4] Directions dated 16 October 2024 (the directions) along with the application lodged on 4 December 2023 was served on each of the respondents individually by courier track and trace at the addresses provided for that purpose in the companies register. I have reviewed the service information and am satisfied service was affected on Yamaya, Mr Kang and Mrs Kim on 18 October 2024 at 9.23am.<sup>3</sup> The directions identified the issues to be investigated and determined and proposed a timetable for the parties to file relevant information and that the matter be determined on the papers. No comment on the proposed matters was received and the timetable was confirmed as provided in the directions. Within the timetable Ms Lee filed and served relevant information including an affidavit sworn on 21 October 2024, submissions dated 23 October 2024 and a copy of the filing fee invoice issued for this matter dated 3 December 2023. The respondents have not filed information within the timetable or otherwise engaged with the Authority. They have had a fair opportunity to participate in the Authority's investigation and it is appropriate to move to determine this application.

---

<sup>2</sup> *Suhee Lee v Yamaya NZ Ltd* [2023] NZERA 66 at [18].

<sup>3</sup> Employment Relations Authority Regulations 2000, clause 16.

## Issues

- [5] The issues for investigation and determination are whether:
- (i) a compliance order should be made against Yamaya NZ Limited to comply with [51] of the determination issued on 2 October 2023;
  - (ii) a compliance order should be made against Yamaya NZ Limited to comply with [19] of the determination issued on 9 November 2023;
  - (iii) an order for interest should be made on any sum for which compliance is ordered;
  - (iv) a penalty should be ordered against Yamaya NZ Limited and awarded to Suhee Lee;
  - (v) whether a compliance order should be made against Jung Im Kang and Kyung Kim to take the necessary steps to enable Yamaya NZ Limited to comply; and
  - (vi) is any party entitled to an award of costs.

## Compliance orders

[6] On 2 October 2023, the Authority issued a substantive determination upholding Ms Lee's various claims and ordering Yamaya to pay to her:<sup>4</sup>

- (a) \$18,000 compensation and \$5,520 (gross) for lost wages arising from unjustifiable dismissal;
- (b) \$1,380 gross and \$368 net arrears of wages and holiday pay, respectively;
- (c) interest; and
- (d) \$6,000 penalty (half to be paid to the Crown).

[7] On 9 October 2023, the Authority issued a costs determination ordering Yamaya to pay to her:<sup>5</sup>

- (a) \$15,250 costs and \$871.56 disbursements;
- (b) payment of the substantive remedies in the total sum of \$28,636 to be made by instalments - \$1,748 and interest by 30 November 2023; and

---

<sup>4</sup> *Suhee Lee v Yamaya NZ Ltd* [2023] NZERA 572 at [51].

<sup>5</sup> *Suhee Lee v Yamaya NZ Ltd* [2023] NZERA 661 at [18].

monthly payment of \$4,481.33 for 6 months by 20 December 2023 and thereafter; and

- (c) failure to make payment of the instalments set out above would result in the whole amount becoming due and owing.

[8] Ms Lee averred the payments have been outstanding for over a year and Yamaya has given no indication of an intention to pay including not adhering to an agreement reached by the parties to pay \$400 per month while the challenge was afoot. I am satisfied Ms Lee she has not received any payment from Yamaya as ordered in the earlier determinations. Having failed to comply with the instalment payments as ordered the whole sum became due and owing on 1 December 2023.

(i) *Yamaya NZ Limited*

[9] It is accepted that there has been a failure to comply with the relevant substantive determinations and it is appropriate to exercise my discretion under s 137(1)(b) of the Act to order compliance with the awards contained therein.

[10] Within 28 days of the date of this determination Yamaya NZ Limited is ordered to comply with the earlier determinations and pay Suhee Lee the following sums:

- (a) \$18,000 compensation;
- (b) \$5,520 (gross) for lost wages;
- (c) \$1,380 gross arrears of wages;
- (d) \$368 net arrears in holiday pay holiday pay;
- (e) \$3,000 being half the awarded penalty;
- (f) interest is to be calculated on the arrears from 12 September 2021 until paid in full;<sup>6</sup> and
- (g) \$15,250 costs and \$871.56 in disbursements.

(ii) *Jung Im Kang and Kyung Kim*

[11] Under s 137 of the Act the Authority has a broad discretion to order compliance with a range of matters including determinations issued by the Authority. A compliance

---

<sup>6</sup> N4 at [40].

order may be made against a person who is not an original party to the proceedings for the purpose of ensuring earlier decisions are complied with.

[12] The terms of any such compliance orders would usually be to ensure that the original party complies with the orders being enforced, not that the joined parties should themselves comply by, for example, personally paying sums of money ordered. In cases where an incorporated employer has failed to pay a sum of compensation to an employee, the Authority may order a director to use his or her position of control to ensure that the liability is met by the employer company.<sup>7</sup> There may be cases where joining should be declined because it would serve no useful purpose.<sup>8</sup>

[13] Jung Im Kang and Kyung Kim are aware of the claim Ms Lee has made against them and the nature of the claim. They are, I am satisfied aware Yamaya is in default of the obligation owed to Ms Lee to pay the outstanding amount owed under the determinations and which are the subject of compliance orders as set out above. They have had a fair opportunity to provide information relevant to whether the order sought against them should be made.

[14] Jung Im Kang and Kyung Kim are the directors and shareholders of Yamaya. They, as the controlling mind of Yamaya, instructed counsel to challenge the determination which ordered payment by instalment, seek a stay of the orders made in the determinations, negotiate terms of the stay with Ms Lee and to not proceed with the challenge. I am satisfied Jung Im Kang and Kyung Kim both have sufficient connection to and the necessary power to arrange for Yamaya to secure and provide the funds to meet the obligations it owes to Ms Lee. This is not a situation where the corporate veil is lifted, and an order made against Jung Im Kang and Kyung Kim personally to put Yamaya into funds to meet the obligation owed to Ms Lee.

[15] As to whether the order will serve no useful purpose, on the information before the Authority, that cannot be said with certainty. There is no information before the Authority that Yamaya is no longer operating its business. While Yamaya and Jung Im

---

<sup>7</sup> *Northern Clerical IUOW v Lawrence Publishing Co of NZ Ltd* (1990) ERNZ Sel Cas 667 (LC); *Allen Chambers Ltd v Pelabon* [2019] NZEmpC 45 at [43]–[58].

<sup>8</sup> At [17].

Kang and Kyung Kim have not provided information to the Authority relevant to this issue, they have had a fair opportunity to do so.

[16] Under s 137(2) of the Act within 28 days of the date of this determination Jung Im Kang and Kyung Kim are ordered to take the steps necessary to ensure Yamaya NZ Limited meets its obligations to make payment in full of the amount due to Ms Lee being:

**Interest – outstanding costs**

[17] Ms Lee seeks interest on the outstanding compensation and lost wages award and the costs award. 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.

[18] It is appropriate where a person has been deprived of the use of money to make an award for interest. Yamaya is ordered to calculate and pay interest on the compensation of award of \$18,000, the lost wages award of \$5,520 (gross), the costs award of \$15,250 costs and \$871.56 disbursements within 28 days of the date of this determination.

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

[20] 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.

**Penalty**

[21] The penalty claim cannot succeed – the Act does not provide that the Authority may issue a penalty for non-compliance with a determination.

## Summary of orders

[22] The Authority orders as follows:

- (i) Within 28 days of the date of this determination Yamaya NZ Limited is ordered to comply with Authority determinations *Suhee Lee v Yamaya NZ Ltd* [2023] NZERA 572 and *Suhee Lee v Yamaya NZ Ltd* [2023] NZERA 661 and pay Suhee Lee the following sums:
  - (a) \$18,000 compensation;
  - (b) \$5,520 (gross) for lost wages;
  - (c) \$1,380 gross arrears of wages;
  - (d) \$368 net arrears in holiday pay holiday pay;
  - (e) \$3,000 being half the awarded penalty;
  - (f) calculate and pay interest on the arrears from 12 September 2021 until paid in full; and
  - (g) \$15,250 costs and \$871.56 in disbursements.
- (ii) Within 28 days of the date of this determination Yamaya NZ Limited is ordered to calculate and pay interest on the outstanding compensation, lost wages, costs and disbursements as provided at [18] above.
- (iii) Within 28 days of the date of this determination Jung Im Kang and Kyung Kim are ordered to take all steps necessary to ensure Yamaya NZ Limited is put into funds to make full payment to Suhee Lee the following sums set out in [22](i) above.

[23] Imposition of a compliance order is a serious matter. Should Yamaya, Jung Im Kang and Kyung Kim fail to comply with the compliance orders made, Ms Lee is entitled to pursue the breach in the Employment Court or the District Court. The Employment Court has powers to impose a fine not exceeding \$40,000, order property to be sequestered, or impose a sentence of imprisonment not exceeding 3 months.<sup>9</sup> Alternatively, a certificate of determination may be obtained from the Authority and

---

<sup>9</sup> Section 139 and 140(6) Employment Relations Act 2000.

enforcement obtained from the District Court.

**Costs of representation and reimbursement of filing fee**

[24] Ms Lee seeks a costs award of \$1,500 (being one third of the Authority's usual daily tariff) and the \$71.55 filing fee. That Ms Lee has incurred costs of professional representation in lodging this application is accepted as is counsel's confirmation that actual costs incurred exceed the costs sought.

[25] Given the relevant factors including that this matter was able to be determined on the papers, \$1,000 is a reasonable contribution to the costs of professional representative Ms Lee has incurred. She is also entitled to recover the filing fee of \$71.55 incurred in lodging this application.

[26] Yamaya NZ Limited, Jung Im Kang and Kyung Kim are jointly and severally liable to pay Suhee Lee for \$1,000 in costs plus the filing fee of \$71.55 to be paid within 28 days of the date of this determination.

Marija Urlich  
Member of the Employment Relations Authority