

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 743  
3318360

BETWEEN SEBASTIAN DE LA ROSA TORO  
Applicant

AND MUSA BAIG AKA MUSA  
AQEEL  
Respondent

Member of Authority: Rachel Larmer

Representatives: David Prisk, advocate for the Applicant  
No appearance by the Respondent

Investigation Meeting: 13 December 2024 in Auckland

Oral Determination: 13 December 2024

Written Record Issued: 13 December 2024

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**ORAL DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant Mr Sebastian de la Rosa Toro was previously employed by the respondent, Musa Baig who is also known as Musa Aqeel. On 19 July 2024 the Authority issued a substantive determination in Mr de la Rosa Toro's favour against Mr Baig.<sup>1</sup>

[2] Mr de la Rosa Toro succeeded with his claims for wage arrears, breach of good faith, breach of his employment agreement, breach of the Holidays Act 2003 (the HA03) and constructive dismissal.

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<sup>1</sup> *De la Rosa Toro v Baig* [2024] NZERA 434.

[3] Mr Baig was ordered to pay Mr de la Rosa Toro \$45,141.75 gross plus interest on \$10,870.20 (being the wage arrears component of the amount he was awarded) which was to run from 20 November 2023 until it had been paid in full.

[4] Mr de la Rosa Toro's representative and Mr Baig had email communications on 20 and 22 August 2024 regarding the money he owed Mr de la Rosa Toro. Mr Baig said he was unable to pay anything, was mentally stressed and was trying to find a job. Mr Prisk encouraged Mr Baig to engage in the Authority's investigation process so his personal and financial circumstances could be considered.

### **Service**

[5] On 28 August 2024 Mr de la Rosa Toro lodged a statement of problem (SoP) requesting that Mr Baig be ordered to comply with the Authority's substantive determination dated 19 July 2024 ("the compliance order application").

[6] The Authority emailed Mr Baig at the email address in the SoP and asked if the compliance order application could be served on him by email. Mr Baig confirmed it could. The SoP was then emailed to Mr Baig on 29 August 2024. However, the Authority received a message in response that its email was undeliverable, despite Mr Baig's prior confirmation he could be emailed at that email address.

[7] Mr Baig has not engaged with the Authority since he confirmed on 29 August 2024 that the SoP could be served on him by email. No statement in reply (SiR) has been lodged, and no application for leave to lodge a SiR out of time has been made. Mr Baig has not responded to the Authority's attempts to contact him about this matter.

[8] The Authority also sent a copy of the SoP to Mr Baig via track and trace courier to his last known address at St Claire Road Silverdale on 19 September 2024. However, it was not delivered because the courier reported they were unable to obtain a delivery signature.

[9] Further inquiries by the Authority with NZ Post regarding this non-delivery of the SoP in this matter established that the person at the above address refused to provide the courier with a delivery signature and would not accept the courier delivery of the SoP.

[10] On 23 September 2024 Mr de la Rosa Toro's representative (Mr Prisk) advised the Authority that he knew where Mr Baig lived, so could personally serve the SoP on

him. He was asked to do that and then to confirm to the Authority that service had occurred.

[11] Mr Prisk reported back to the Authority on 30 October 2024 that Mr Baig was no longer at his previous address and had not left a forwarding address.

[12] Mr Prisk asked for permission to serve the SoP via email and he provided a number of email addresses Mr Baig and/or his immediate family members were associated with, which had been discovered because of the new business Mr Baig and his family were advertising under his name of “Musa Aqeel”. Mr Baig’s new business was called “LMJS”.

[13] There are photos of Mr Baig, his wife, son and another individual on the LMJS business website which had phone and email contact details. Mr Baig identified himself in his photo on the LMJS website as “Musa Aqeel”. LMJS was not a registered entity, although Mr Baig called himself a “director” in a photo on the LMJS website.

[14] The photos of Mr Baig, his wife and son on his new LMJS business website meant that emails sent to the contact email addresses on this new business website would be likely to come to Mr Baig’s attention. The LMJS business email address on the website it used to advertise its business services would likely be cleared by Mr Baig and/or one of his immediate family members.

#### *Substituted service*

[15] The Authority was concerned Mr Baig appeared to be avoiding service. Accordingly, an order for substituted service was made pursuant to regulation 16 of the Employment Relations Authority Regulations 2000 (the Regulations).

[16] Mr de la Rosa Toro was authorised to serve the SoP, the Directions of the Authority (DoA) dated 11 November 2024 and the Notice of Investigation Meeting (Notice of IM) which are together referred to as “the service documents” on Mr Baig by sending a copy of them by email to the following email addresses:

- (a) The general contact email on the website of a new business Mr Baig is running with his wife and son (business is called LMJS but is not a registered entity);
- (b) His personal email for the LMJS business; and

(c) His last business email address.

[17] Mr Prisk provided confirmation that he had served Mr Baig by email at the above email addresses, in accordance with the order for substituted service. Mr Prisk advised the Authority that after service had occurred it appeared that Mr Baig had closed down the LMJS business.

[18] Mr Prisk advised the Authority at the investigation meeting that he had also sent the service documents, which included the notice of this investigation meeting, to Mr Baig via WhatsApp. Mr Prisk told the Authority he had received the two double blue ticks that signified the WhatsApp message and attachments had been read by Mr Baig. They had also spoken via WhatsApp after service had occurred.

[19] The Authority also posted a copy of the service documents to Mr Baig's last known address, which complied with the service requirements in the Regulations.

[20] Mr Baig had therefore been made aware of the substantive determination and these compliance order proceedings.

#### *Directions*

[21] In order to facilitate Mr Baig's participation in the Authority's compliance order investigation, in DoA dated 11 November 2024 Mr Baig was granted leave by the Authority to lodge a statement in reply (SiR) to this compliance order application out of time. He was given until 12pm on 2 December 2024 to do so.

[22] Mr Baig was also directed to lodge a witness statement by that same time, that fully set out his current financial situation and in particular his ability to pay the money Mr de la Rosa Toro had been awarded. That did not occur.

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

##### *Non-engagement by Mr Baig*

[23] Mr Baig has not participated in the Authority's investigation and he has not had any communications with the Authority about this matter, other than his first email on 29 August 2024 that confirmed he could be served with the SoP by email.

[24] Mr Baig failed to lodge a statement in reply within 14 days of the statement of problem being served on him. He also failed to comply with the extended time to lodge a SiR, after he was given leave to do so out of time.

[25] No information about his current ability to pay has been provided by him, although Mr Prisk did provide the Authority with a copy of Mr Baig's email dated 22 August 2024 explaining he was unable to pay Mr de la Rosa Toro anything.

[26] Mr Baig failed to answer the Authority officer's phone calls, including a call made to him on the morning of the investigation meeting to ascertain whether or not he would be attending. Nor did Mr Baig respond to the Authority's previous emails to him about this matter.

[27] Mr Baig spoke to Mr de la Rosa Toro's advocate by phone on 2 December 2024, again stating he had no money and that he would be attending the investigation meeting today.

#### *Investigation meeting*

[28] The Authority held an in-person investigation meeting in Auckland on 13 December 2024. The Authority was assisted by a Spanish interpreter.

[29] The start of the investigation meeting was delayed by 30 minutes to give Mr Baig additional time to appear, even though he had failed to engage with the Authority about this matter.

[30] Mr Baig did not attend the investigation meeting although he had received notice of it. Mr Prisk said he received a WhatsApp message from Mr Baig that he was sick, so would not be attending today's investigation meeting.

[31] Mr de la Rosa Toro attended the investigation meeting. He gave evidence under affirmation and was questioned by the Authority about his claims, his witness statement and the documents he had provided. He was also questioned about the allegations Mr Baig made in his email dated 22 August 2024 to Mr Prisk, which Mr de la Rosa Toro completely denied.

[32] Mr de la Rosa Toro's uncontested evidence was accepted by the Authority.

[33] The Authority issued an oral determination at the conclusion of the evidence during the investigation meeting held on 13 December 2024.

#### **The issues**

[34] The following issues are to be determined:

- (a) Is Mr de la Rosa Toro still owed the wage arrears and other money he was awarded in the Authority's substantive determination dated 19 July 2024?
- (b) If so, should a compliance order be issued?
- (c) What costs and disbursements should be awarded?

**Is Mr de la Rosa De la Rosa Toro still owed wage arrears and other money?**

[35] Within 28 days of 19 July 2024 (being the date of the substantive determination), Mr Baig was ordered to pay Mr de la Rosa Toro \$45,141.75 gross, plus interest, consisting of:

- (a) \$10,870.20 gross wage arrears;
- (b) Interest on \$10,870.20 gross which was to run from 20 November 2023 until it has been paid in full. Interest was to be calculated using the Civil Debt Calculator on the Ministry of Justice website;
- (c) \$11,700.00 lost remuneration under s 128(2) of the Employment Relations Act (the Act);
- (d) \$20,000.00 distress compensation under s 123(1)(c)(i) of the Act;
- (e) \$2,500.00 contribution towards his actual legal costs; and
- (f) \$71.55 to reimburse his filing fee.

[36] The interest component of the substantive determination up to and including today is \$704.06, being interest on the amount of \$10,870.20 from 20 November 2023 to the date of the investigation meeting on 13 December 2024.

**Should a compliance order be issued?**

[37] Mr Baig has failed to meet his obligations to Mr de la Rosa Toro, as per paragraph [67] of the substantive determination dated 19 July 2024.<sup>2</sup> No steps have been taken by Mr Baig to pay Mr de la Rosa Toro anything, so the full amount remains outstanding.

[38] It was unlikely that Mr Baig would voluntarily pay Mr de la Rosa Toro any of the money he was owed, making a compliance order necessary and appropriate.

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<sup>2</sup> Above n1.

[39] Mr de la Rosa Toro is entitled to recover the money Mr Baig has been ordered to pay him, so a compliance order has now been issued pursuant to s 137(1)(b) of the Act to compel him to do so. Accordingly, Mr Baig has 28 days from the date of this determination to comply with all of the orders made in this determination.

#### **What costs and disbursements should be awarded?**

[40] Mr de la Rosa Toro, as the successful party, is entitled to a contribution towards his actual costs and disbursements.

[41] This matter involved a half-day investigation meeting, so the notional starting point for assessing costs was \$2,250.00, being half of the current notional daily tariff of \$4,500.00 for the first day of an investigation meeting.

[42] There are no factors that warrant the notional starting tariff being reduced. However, it did need to be increased by \$500 to reflect the extra time and costs Mr de la Rosa Toro actually incurred as a result of the service related issues his advocate was required to address.

[43] Within 28 days of the date of this determination, Mr Baig is ordered to pay Mr de la Rosa Toro \$2,750.00 towards his actual legal costs. Mr Baig is also ordered to reimburse him \$71.55 for his filing fee in this matter. Mr Baig therefore has been ordered to pay Mr de la Rosa Toro a total of \$2,821.55 towards his actual costs and disbursements.

#### **Orders**

[44] Pursuant to s 137(1)(b) of the Act, the Authority orders that within 28 days of the date of this determination, Mr Baig is ordered to comply with paragraph [67] of the substantive determination dated 19 July 2024.<sup>3</sup>

[45] Accordingly, Mr Baig is now required to pay Mr de la Rosa Toro \$48,667.36 gross consisting of:

- (a) \$45,141.75 gross awarded in the substantive determination dated 19 July 2024;
- (b) \$704.06 being interest on \$10,870.20 gross wage arrears from 20 November 2023 until the investigation meeting on 13 December

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<sup>3</sup> Above n1.

2024, calculated using the Civil Debt Calculator on the Ministry of Justice website; and

- (c) \$2,821.55, being costs of \$2,750 plus a disbursement of \$71.55 that were awarded in this matter.

### **Interest**

[46] Mr Baig is also ordered to pay interest on the outstanding total amount of \$48,667.36 that was awarded to Mr de la Rosa Toro in this determination. Interest runs on the amount of \$48,667.36 from 16 December 2024 until that amount (plus interest) has been paid in full to Mr de la Rosa Toro.

[47] All interest is to be calculated using the Civil Debt Calculator on the Ministry of Justice website.

### **Failure to comply with this compliance order**

[48] Mr Baig is warned that failure to comply with paragraph [67] of the substantive determination, by paying Mr de la Rosa Toro the money he was awarded, could result in him applying to the Employment Court under s 140(1) of the Act for a further compliance order.<sup>4</sup>

[49] In which case, the Employment Court had power under s 140(6) of the Employment Relations Act 2000 to potentially:

- (a) Impose a sentence of imprisonment not exceeding three months;
- (b) Impose a fine up to a maximum of \$40,000 on Mr Baig;
- (c) Order that Mr Baig's property be sequestered.

Rachel Larmer  
Member of the Employment Relations Authority

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<sup>4</sup> Above n1.