

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 230
3359264

BETWEEN RITCHIES MURPHY
TRANSPORT SOLUTIONS
LIMITED
Applicant

AND FERETI FUIMAONO
Respondent

Member of Authority: Robin Arthur

Representatives: Anthony Drake, counsel for the Applicant
Epenesa Sooula Anthony Drake and Rosie Judd,
counsel for the Respondent

Investigation: By telephone conference on 28 April 2025 and by
correspondence

Determination: 29 April 2025

DETERMINATION OF THE AUTHORITY

[1] Ritchies Murphy Transport Solutions Limited (the company) sought a compliance order against Fereti Fuimaono for payment of a costs order made in an Authority determination on 5 November 2024.¹ The costs order followed findings in an earlier Authority determination that the company had acted justifiably in dismissing Fereti Fuimaono for serious misconduct.²

[2] Mr Fuimaono has challenged the Authority's substantive determination but, according to the information available to the Authority, not applied to the court or the Authority for a stay of the costs determination pending the court's decision on his challenge.³

¹ *Fuimaono v Ritchies Murphy Transport Solutions Limited* [2024] NZERA 656.

² *Fuimaono v Ritchies Murphy Transport Solutions Limited* [2024] NZERA 563.

³ EmpC 408/2024.

[3] According to a Minute of Employment Court Judge M S King about a directions conference held with counsel on 7 February 2025 about the challenge to the substantive determination, counsel for Mr Fuimaono advised he intended to file an application to stay the Authority's costs determination. The judge noted that "[c]ounsel agreed that this application will be advanced in a timely manner to enable them to be dealt with well before any hearing."

[4] By email message to the Authority on 11 April, in relation to the costs compliance application, counsel for the company advised that after checking with the court registry, he understood no application for a stay had been filed.

No response to the compliance application

[5] Counsel who acted for Mr Fuimaono in the Authority, and is on record as counsel in his challenge in the Employment Court, has not responded to Authority email and telephone messages about this application. The Authority also served a copy of the company's compliance application to the residential address held on the Authority file for Mr Fuimaono. A copy of the company's application was sent by the Authority to the law office address held for Mr Fuimaono's counsel but returned with a note that the courier was unable to deliver the envelope at that address.

[6] No statement in reply to the compliance application has been lodged.

[7] In light of those attempts to provide an opportunity for reply, without success, I had the following email message sent to addresses for counsel for both parties and for Mr Fuimaono on 16 April:

In these circumstances I intend taking the following steps to progress this matter:

1. Hold a case management conference on Monday, 28 February at 1pm. This is an opportunity for representatives to provide any update on this matter. I will proceed in the event there is no attendance on behalf of Mr Fuimaono. As well as being addressed to Ms Sooula, this message is also to be copied to the email address held for Mr Fuimaono on the previous Authority matter.
2. Subject to what may be said at this conference, proceed to issue a determination on the compliance order without further investigation or inquiry.

[8] Neither Mr Fuimaono nor his counsel responded to this message.

[9] Messages confirming the case management conference date and time were also sent to counsel for Mr Fuimaono on 23 April and on the mornings of 25 April and 28 April.

Case management conference call

[10] At the appointed time for case management conference the Authority was able to contact counsel for both parties by telephone.

[11] Ms Sooula advised that she had not read the email messages from the Authority but sought a further two days to lodge a response to the compliance order application. She said she had instructions from Mr Fuimaono to oppose any costs order.

[12] Mr Drake opposed any further delay, referring to Ms Sooula's earlier undertaking to the court to promptly lodge a stay application in February.

[13] Having heard briefly from counsel I advised that I considered there had been adequate opportunity to respond and it was appropriate for the Authority to determine the application without further delay. This was the approach foreshadowed to counsel in my message on 16 April. And, as noted in my discussion with counsel, if Mr Fuimaono did not comply with any orders now made, that issue could end up before the court as an enforcement matter anyway.⁴

No challenge or stay application on costs determination

[14] The election to make a challenge to an Authority determination does not operate as a stay of proceedings on an Authority determination unless the court of the Authority so orders.⁵

[15] Where, as in this case, an election has been made to challenge an Authority determination on the substantive issue, regarding justification of a dismissal, the court's practice guidelines set out how parties should deal with the matter of a challenge or stay of any subsequent costs determination.⁶ None of those guidelines appear to have been followed by Mr Fuimaono and his counsel in this case.

⁴ Employment Relations Act 2000, s 138(6) and s 140(6).

⁵ Employment Relations Act 2000, s 180.

⁶ Employment Court Practice Directions (1 September 2024), see www.employmentcourt.govt.nz.

[16] The costs ordered in November 2024 were due to be paid by 3 December 2025. More than 11 weeks have passed Mr Fuimaono's counsel told the court, on 7 February 2025, that an application to stay that order would be made.

[17] No stay has been sought and granted, from either the court or the Authority. Mr Fuimaono has had a reasonable opportunity to respond to the company's request for a compliance order to pay the costs.

[18] In those circumstances it was appropriate for the Authority to proceed, without further inquiry or delay, to order Mr Fuimaono to pay the costs ordered.

Orders

[19] Accordingly, by no later than 28 days from the date of this determination, Mr Fuimaono must pay to the company the costs of \$10,000 he was ordered to pay in December 2025. This order is made under s 137(1)(b) of the Employment Relations Act.

[20] Mr Fuimaono must also pay the company, by no later than 28 days from the date of this determination, the further sum of \$500 costs and \$71.55 expenses as a contribution to costs and expenses incurred in bringing this compliance application.

Robin Arthur
Member of the Employment Relations Authority