

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 379
3317340

BETWEEN	DURGESH DURGESH Applicant
AND	PRO-AUTO CARS REFINISHING LIMITED First Respondent
AND	PRANESH KARAN Second Respondent

Member of Authority:	Andrew Gane
Representatives:	John Wood, advocate for the Applicant Pranesh Karan, advocate for the Respondent
Investigation meeting:	On the papers
Further submissions and information received:	Up to 31 May 2025 from the Applicant
Date:	1 July 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] By application lodged on 13 August 2024 Durgesh Durgesh seeks compliance (the compliance application) of:

- (a) the determination of the Authority of 22 May 2024 (the first determination) in which his former employer Pro-Auto Cars Limited (Pro-Auto) and Pranesh Karan were ordered to pay sums to him.¹

¹ *Durgesh v Pro-Auto Cars Refinishing Limited & Anor* [2024] NZERA 302.

(b) the determination of the Authority of 5 July 2024 (the cost determination) in which Pro-Auto was ordered to pay sums to him.²

[2] Pro-Auto and Mr Karan did not lodge a statement in reply.

The Authority's Investigation

[3] Following a case management conference (CMC) held on 3 December 2024 it was agreed that in the interests of avoiding unnecessary costs and time, the matter would be heard on the papers. Pro-Auto's director Mr Karan appeared at the CMC and claimed Pro-Auto had no money or income. Apart from appearing at the CMC, Mr Karan took no further part in proceedings in respect of this matter. Mr Durgesh lodged an affidavit, supporting documents and submissions in support of his application.³

[4] The compliance application was temporarily stayed while Mr Durgesh made a further application to the Authority to reopen the costs determination. The application to reopen the costs determination was declined.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination does not record all the evidence and submissions received and fully considered during the Authority's investigation, but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result

Issues

[6] The issues for investigation and determination are:

(a) Did Pro-Auto and Mr Karan breach the Authority's determinations requiring them to pay sums to Mr Durgesh?

(b) If so, should compliance orders be issued against Pro-Auto and Mr Karan including, consideration of any applications that payment should be made by instalments?

(c) Should Pro-Auto and Mr Karan be ordered to pay interest on any amount outstanding under the determination?

² *Durgesh v Pro-Auto Cars Refinishing Limited & Anor* [2024] NZERA 429.

³ Employment Relations Act 2000, s174D.

(d) Should Mr Durgesh be awarded a further sum of \$1,125.00 in costs on this application?

(e) Should Pro-Auto and Mr Karan be required to reimburse the applicant for the filing fee of \$71.55

Background

[7] On 22 May 2024, the Authority issued the first determination upholding Mr Durgesh's various claims and ordering Pro-Auto to pay to him:

(a) wage arrears of \$4,320.00 (gross).

(b) annual holidays \$1,541.97 (gross).

(c) sick leave \$216.00 (gross).

(d) interest on these amounts, from when his employment ended on 23 March 2022, until when the money was paid.

[8] Mr Karan was also determined to be a person involved in the breaches of employment standards by Pro-Auto pursuant to s 142Y of the Act. Leave was granted to Mr Durgesh to recover the amounts set out above, if Pro-Auto Cars Refinishing Limited was unable to pay the amounts owed.

[9] On 5 July 2024, the Authority also issued a costs determination ordering Pro-Auto Cars Refinishing Limited to pay to Mr Durgesh:

(a) Costs of \$4,500.; and

(b) Disbursements of pay \$71.55.

Compliance orders

[10] The compliance application arises from the determinations of the Authority. The amounts ordered to be paid are expected by the Authority to be paid, either by the date specified in the determination, or within a reasonable timeframe. It has been one year since the first determination and almost eleven months since the costs determination when the amounts were ordered to be paid. That is an unreasonable length of time.

[11] The power to grant compliance orders is discretionary. When discussing the equivalent provision under the Employment Contracts Act 1993, a Full Court of the

Employment Court found that this “is not an absolute discretion, but one that is conditioned by the need to do justice”.⁴

[12] Mr Durgesh confirmed that he has not received any payment from Pro-Auto or Mr Karan and therefore they are in breach of the Authority determinations.

[13] Pro-Auto and Mr Karan have not lodged any submissions or evidence in the Authority, and they have not brought an Employment Court challenge of the Authority’s previous determinations.

[14] Although Mr Karan had earlier stated that Pro-Auto does not have the funds to pay, Pro-Auto remains a currently registered company, and is not in administration.

[15] The interest awarded in the determinations will continue to accumulate until the amount ordered is paid in full.

[16] Mr Durgesh submitted the payments ordered by the Authority have been outstanding for over a year and Mr Karan said it has said it is unable to pay.

[17] I am satisfied that Pro-Auto and Mr Karan have not complied with the terms of the determinations and it is just in the circumstances to exercise my discretion under s 137(1)(b) of the Act for an order to be made requiring Pro-Auto and Mr Karan to comply with the Authority’s determinations

[18] I note here the imposition of a compliance order is a serious matter. Should Pro Auto and/or Mr Karan fail to comply with the compliance order I have made, Mr Durgesh 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. Alternatively, a certificate of determination may be obtained from the Authority and enforcement obtained in the District Court.⁵

⁴ *United Food and Chemical Workers Union of NZ v Talley* 1992] 1 ERNZ 756.

⁵ Employment Relations Act, ss 139 and 140(6).

Summary of orders

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

First determination

As set out in paragraph 8 above, Mr Karan is a person liable for the amounts ordered in the first determination. I am satisfied Pro-Auto Cars Refinishing Limited was unable to pay the amounts owed within 28 days of the first determination being made. Pursuant to s 142Y of the Act, I exercise my discretion and order Pranesh Karan to make payment to Mr Durgesh Durgesh within 28 days of this determination:

- (a) Wage arrears of \$4,320.00 (gross)
- (b) Annual holidays \$1,541.97 (gross)
- (c) Sick leave \$216.00 (gross)
- (d) Interest on these amounts, from when his employment ended on 23 March 2020, until when the money was paid.

Costs determination

[20] Pro-Auto Cars Refinishing Limited is ordered to make payment to Mr Durgesh Durgesh within 28 days of this determination:

- (a) Costs of \$4,500.
- (b) Disbursements of \$71.55 for the lodgement fee.

Costs

[21] Mr Durgesh seeks a contribution of \$1,125.00 towards the costs of representation he has incurred. The Authority has discretion to award costs, may order any party to pay costs and expenses as it thinks reasonable, and may apportion such costs and expenses between the parties as it thinks fit.

[22] I consider a costs award in the amount of \$1,125.00 is appropriate.

[23] Pro-Auto Cars Refinishing Limited and Pranesh Karan are jointly and severally ordered to make payment to Mr Durgesh within 28 days of this determination:

(a) Costs of \$1125.00

(b) Disbursements of \$71.55 for the lodgement fee.

Andrew Gane
Member of the Employment Relations Authority