

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 42  
3316780

BETWEEN

ADELE ROSS  
Applicant

AND

S & D DECORATORS  
LIMITED  
Respondent

Member of Authority: Shane Kinley

Representatives: Rachel Rolston, advocate for the applicant  
No appearance for the respondent

Investigation Meeting: On the papers

Submissions: Up to 29 October 2024

Determination: 28 January 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] In an application initially lodged on 14 August 2024 Adele Ross seeks to enforce by way of compliance order, awards made in her favour against her former employer S & D Decorators Limited (S&DDL) in determinations of the Authority issued on 4 July 2024 and 19 August 2024.<sup>1</sup> She also initially sought a penalty and costs.

[2] S&DDL has not substantively responded in relation to this matter.

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<sup>1</sup> *Ross v S & D Decorators Limited* [2024] NZERA 401 (substantive determination) and *Ross v S & D Decorators Limited* [2024] NZERA 494 (costs determination).

## **The Authority's investigation**

[3] An Authority Officer spoke with Joshua Speck, one of the shareholders and directors of S&DDL, on 14 August 2024 to confirm the email address for service of the statement of problem. Mr Speck confirmed the correct email address and also advised S&DDL would be in liquidation shortly however as at the date of this determination this does not appear to have occurred based on the Companies Register records for S&DDL.

[4] S&DDL did not file a statement in reply in this matter. This needed to be lodged within 14 days after the date of the service of the statement of problem, which I am satisfied occurred by email on 14 August 2024. I am also satisfied Mr Speck was advised by an Authority Officer that a statement of reply needed to be lodged and was due by 29 August 2024.

[5] A case management conference was held on 10 October 2024 with Ms Ross' advocate in attendance. The Authority Officer attempted to call Mr Speck on the contact phone number he had previously communicated with the Authority using but he did not answer the call. I am satisfied that S&DDL had been advised of the time of the conference, so it proceeded in Mr Speck's absence, as S&DDL had been advised it would.

[6] I issued directions on 11 October 2024 advising the parties of the timetable for the investigation and in particular advising S&DDL it would now require leave from the Authority to reply or respond to this application.

[7] I provided a final opportunity for S&DDL to engage with this matter by 25 October 2024. S&DDL were also advised if it did not engage by 25 October 2024 then I may proceed to determine this matter without hearing from it under cl 12 of sch 2 of the Employment Relations Act 2000 (the Act).

[8] My directions of 11 October 2024 were couriered to the registered office and address for service of S&DDL at 7.55am on 12 October 2024. These directions were returned to the courier company on 29 October 2024. I am satisfied, based on a query to the courier company on 17 January 2025, that these directions were delivered to the registered office address for service of S&DDL.

[9] Submissions on behalf of and a written affidavit from Ms Ross were received on 29 October 2024. S&DDL has not filed information within the timetable or otherwise engaged with the Authority. It has had a fair opportunity to participate in the Authority's investigation and it is appropriate to move to determine this application.

[10] 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.

### **The issues**

[11] The issues requiring investigation and determination are whether a compliance order should be made against S&DDL requiring it comply with:

- (a) orders in paragraph [65] of the substantive determination issued on 4 July 2024; and
- (b) the order in paragraph [12] of the costs determination issued on 19 August 2024?

[12] Ms Ross' initial statement of problem was lodged prior to the costs determination being issued on 19 August 2024. Ms Ross' advocate had previously advised S&DDL compliance with the costs determination would be sought and confirmed this at the case management conference on 10 October 2024. I therefore included this as an issue in my directions of 11 October 2024. I am satisfied S&DDL were advised of this issue and it is appropriate to proceed to determine it.

[13] Submissions on behalf of Ms Ross withdrew her claims for a penalty and costs in relation to this application, so I do not need to consider these claims further and they are not addressed further in this determination.

### **Relevant background**

[14] On 4 July 2023 I issued a substantive determination upholding Ms Ross' claims against S&DDL, finding she had contributed to some degree to the events that led to the breakdown of the employment relationship between her and S&DDL and declining to consider claims raised by S&DDL.<sup>2</sup> I ordered S&DDL to pay Ms Ross within 28 days of the date of that determination:<sup>3</sup>

- (a) Arrears of wages of \$337.50 under s 131 of the Act;

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<sup>2</sup> Above n1, substantive determination at [64].

<sup>3</sup> Ibid at [65].

- (b) Unpaid overtime in the amount of \$922.50 under s 131 of the Act;
- (c) Compensation for a lost benefit for unpaid Kiwisaver employer contributions of \$175.16 under s 123(1)(c)(ii) of the Act;
- (d) Unpaid annual holiday pay of \$467.10 under s 23 of the Holidays Act 2003;
- (e) Compensation for lost wages of \$5,881.14 under s 123(1)(b) of the Act;
- (f) A further \$571.29 for annual holiday pay and \$214.23 for Kiwisaver employer contributions on the above awards of arrears of wages, unpaid overtime and compensation for lost wages (under sub-paragraphs a, b and e); and
- (g) Compensation for hurt and humiliation of \$4,500 under s 123(1)(c)(i) of the Act (being \$5,000 reduced by 10% to reflect contribution under s 124 of the Act).

[15] On 19 August 2024 I issued a costs determination ordering S&DDL to pay Adele Ross within 28 days of the date of that determination the sum of \$4,500 as a contribution to costs.<sup>4</sup> No costs submissions were received from S&DDL.<sup>5</sup>

[16] Ms Ross has provided an affidavit saying the above sums have not been paid and referring to attempts from her advocate to discuss payment arrangements, including instalment options, which were not responded to by S&DDL. I am satisfied Ms Ross has not received the payments ordered to be made to her from S&DDL in the substantive determination and the costs determination as outlined in paragraphs [14] and [15] above.

### **A compliance order is appropriate**

[17] A compliance order may be made under s 137(1)(b) of the Act when any person has not observed or complied with any determination of the Authority. In light of the evidence and information before me, and there being nothing provided by S&DDL to the contrary, I accept S&DDL has failed to comply with the orders in the substantive determination and the costs determination as outlined in paragraphs [14] and [15] above.

[18] Given the amount of time that has passed since the orders were made by the Authority and the fact those orders have not been observed or complied with in full, I

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<sup>4</sup> Above n1, costs determination at [12].

<sup>5</sup> Ibid at [5].

consider it is appropriate to make a compliance order in Ms Ross' favour under s 137(1)(b) of the Act.

### **Compliance order**

[19] Within 28 days of the date of this determination S & D Decorators Limited is ordered to comply with the substantive determination and the costs determination, and pay Adele Ross:

- (a) Arrears of wages of \$337.50 under s131 of the Employment Relations Act 2000 (the Act);
- (b) Unpaid overtime in the amount of \$922.50 under s 131 of the Act;
- (c) Compensation for a lost benefit for unpaid Kiwisaver employer contributions of \$175.16 under s 123(1)(c)(ii) of the Act;
- (d) Unpaid annual holiday pay of \$467.10 under s 23 of the Holidays Act 2003;
- (e) Compensation for lost wages of \$5,881.14 under s 123(1)(b) of the Act;
- (f) A further \$571.29 for annual holiday pay and \$214.23 for Kiwisaver employer contributions on the above awards of arrears of wages, unpaid overtime and compensation for lost wages (under sub-paragraphs a, b and e);
- (g) Compensation for hurt and humiliation of \$4,500 under s 123(1)(c)(i) of the Act (being \$5,000 reduced by 10% to reflect contribution under s 124 of the Act); and
- (h) \$4,500 costs.

[20] There are very serious consequences where there is a failure to comply with a compliance order. Should S&DDL fail to comply with the compliance order made, Ms Ross is entitled to pursue the breach in the Employment Court or the District Court. The Employment Court has powers including to impose a fine not exceeding \$40,000 or order property to be sequestered.<sup>6</sup> Alternatively, a certificate of determination may be obtained from the Authority and enforcement obtained from the District Court.

Shane Kinley  
Member of the Employment Relations Authority

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<sup>6</sup> Sections 139 and 140(6) of the Act.