

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 568
3370043

BETWEEN SEKHENDRA NAIR
Applicant

AND MODERN AUTO REPAIR
CENTRE LIMITED
First Respondent

AND SATYA NAND SHARMA
Second Respondent

Member of Authority: Peter Fuiava

Representatives: Robert Morgan, advocate for the Applicant
Satya Nand Sharma for the First and Second
Respondents

Investigation Meeting: On the papers

Submissions and information received: 7 July and 26 August 2025 from the Applicant
4, 7, 10 and 16 July 2025 from Mr Sharma

Determination: 15 September 2025

DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] Mr Nair seeks compliance orders with determinations of the Authority made in his favour the first being a substantive determination,¹ and the second a costs determination in which Mr Nair was awarded costs on the basis that he was the successful party.²

¹ *Nair v Modern Auto Repair Centre Limited & Sharma* [2025] NZERA 28.

² [2025] NZERA 144.

[2] With respect to the substantive determination, the Authority ordered Modern Auto Repair Centre Limited (MARCL or the company) to pay Mr Nair the following monies no later than Wednesday 19 February 2025:³

- (i) \$14,289.93 in wage and annual leave arrears;
- (ii) interest on \$14,289.93 using the Ministry of Justice civil debt interest calculator from 21 September 2022 until the date payment was made in full;
- (iii) lost wages of \$5,120;
- (iv) compensation for hurt and humiliation of \$13,500; and
- (iii) reasonable expenses of \$71.55 being the Authority's filing fee.

[3] The substantive determination also records that pursuant to s 142W and s 142Y of the Act, Mr Sharma was to pay the \$14,289.93 in wage and annual leave arrears plus interest should MARCL not be able to pay these sums.⁴ Full payment by Mr Sharma of this amount was due 19 February 2025.

[4] At [10] of the costs determination, the Authority ordered MARCL and Mr Sharma to pay costs of \$4,500 either jointly or severally to Mr Nair no later than Friday 28 March 2025.

[5] As of drafting this compliance determination, MARCL and Mr Sharma have made no payments towards any of the Authority's orders. They have instead challenged the costs determination to the Employment Court and have made an application to extend time to file a challenge concerning the substantive determination.

How has the Authority investigated?

[6] On 5 June 2025, I held a case management conference with the applicant's representative, Mr Morgan, and Mr Sharma, MARCL's sole director and shareholder.

[7] In a minute dated 5 June 2025, I indicated to the representatives that compliance of the costs determination would not be considered as that determination was presently the subject of a challenge in the Employment Court. However, upon further reflection, such an approach amounts to a *de facto* stay in proceedings which would be

³ *Nair v Modern Auto Repair Centre Ltd & anor*, above n 1, at [41].

⁴ At [42].

undesirable.⁵ For this reason, I have considered a compliance order for the costs determination as well.

[8] As agreed with the parties at the case management conference, this matter has been determined on the papers having regard to all the information that is presently before the Authority.

[9] 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.

Discussion

[10] A challenge of an Authority determination to the Employment Court does not of itself operate as a stay: s 180 of the Act. The exception to this is if the Court or the Authority ordered a stay of the determination. However, on the information available to me, there is no evidence of a stay of proceedings from either institution.

[11] It is common ground that MARCL and Mr Sharma are in breach of the Authority's substantive and costs determinations because what has been awarded to Mr Nair remains outstanding with no monies paid by either of the respondents.

Should a compliance order requiring payment by instalments be made?

[12] Mr Sharma has provided the Authority with further financial information to support an application for payment by instalments under s 138(4A) of the Act. The section relevantly states:

138 Further provisions relating to compliance order by Authority

...

- (4A) If the compliance order relates in whole or in part to the payment to an employee of a sum of money, the Authority may order payment to the employee by instalments, but only if the financial position of the employer requires it.

[13] To demonstrate that MARCL's financial position is such that payment by instalments is required, Mr Sharma provided the Authority with invoices from his accountant to show that MARCL has outstanding fees of \$2,275 as of 11 April 2025.

⁵ *Tane v Farrand Orchards Limited* [2022] NZERA 309 at [10].

A screen shot of a recent text message from the accountant requests Mr Sharma to clear all invoices “ASAP”.

[14] In addition, Mr Shama provides a copy of a notice of intention to cancel MARCL’s lease for rent arrears. The notice is dated 4 July 2025 and is in the amount of \$12,937.50. Finally, Mr Sharma provides a copy of MARCL’s end of year financial return for 31 March 2024 which records a seven percent reduction in gross profit for the company from the previous year and a second consecutive year in which the business made a net profit of zero. It is understood that Mr Sharma was not able to provide a 2025 end-of-year report for his company because of unpaid accounting fees.

[15] The 2024 end-of-year report is no longer recent and does not assist the respondents’ request for a payment instalment plan under s 138(4A) of the Act. While there is evidence that the company owes its accountant money as well as to its landlord, the total amount of these debts (no others were provided) is significantly less than what MARCL and Mr Sharma owe Mr Nair in wage arrears, compensation, lost wages, and costs. By comparison, the accountant and landlord’s debts are not as old as the wages that Mr Nair has been waiting payment of since September 2022. It is also noted that in the 2023 financial year ending 31 March 2023, Mr Sharma paid himself a shareholder salary of \$76,257.09. On its face, he had the ability to pay Mr Nair’s wage arrears from that time.

[16] The orders that I made in favour of Mr Nair have not been paid for several months which is unacceptable. Payment by instalments would only add to Mr Nair’s financial burden. I may have declined to grant a compliance order altogether if there was evidence of a stay of a proceeding in the Authority or the Court particularly where a stay was granted in circumstances where a payment into court had been made.

[17] However, there is nothing of that nature before me and I am concerned that some nine months on since the substantive determination, nothing has been paid by the respondents. It appears that neither MARCL nor Mr Sharma are serious about satisfying the Authority’s determinations. I therefore decline to exercise my discretion under s 138(4A) in their favour but instead make compliance orders as sought by Mr Nair.

Outcome

[18] For the reasons given above, the Authority orders Modern Auto Repair Centre Limited and Satya Nand Sharma to comply with the Authority's determinations in *Nair v Modern Auto Repair Centre Limited & Sharma* [2025] NZERA 28 and NZERA 144. I give the respondents no later than Tuesday 30 September 2025 to comply.

[19] Certificates of determinations for the above will be provided to Mr Nair shortly.

[20] If the first and second respondents fail to comply with this compliance order, Mr Nair may apply to the Employment Court for the exercise of its powers under s 140(6) of the Act.

Filing fee

[21] Given the outcome of this determination in which Mr Nair has been successful, it is appropriate that he be reimbursed the filing fee of \$71.55 that he paid to lodge his statement of problem with the Authority.

Costs

[22] Mr Morgan has not requested that costs be reserved and consequently this can be attended to now.

[23] The Authority has the power under sch 2 cl 15 of the Act to award costs. However, the discretion to order a party to pay costs to another must be exercised on a principled basis. Those principles are well settled and are outlined in the Authority's Practice Note,⁶ and Practice Direction,⁷ both of which are publicly available online.

[24] Mr Nair has been put to unnecessary expense in seeking compliance orders against MARCL and Mr Sharma. As the successful party, he is entitled to an award of costs. Bearing in mind that costs in the Authority are modest and that the present application was relatively straight forward, the Authority orders Modern Auto Repair

⁶ www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.

⁷ www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf.

Centre Limited and Satya Nand Sharma to jointly and severally pay costs of \$650 to Sekhendra Nair no later than Tuesday 30 September 2025.

Peter Fuiava
Member of the Employment Relations Authority