

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 812
3388365

BETWEEN	RACH STILLMAN Applicant
AND	BROTHER COFFEE LIMITED First Respondent
AND	BRYN EVANS Second Respondent
AND	HALLE EVANS Third Respondent
AND	ROBERT DAI EVANS Fourth Respondent

Member of Authority:	Claire English
Representatives:	Alex Kersjes, advocate for the Applicant Anna Barnett, counsel for the Respondents
Investigation Meeting:	On the Papers
Submissions received:	Up to 3 December 2025 from Applicant 7 October 2025 from Respondent
Determination:	16 December 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In a determination dated 2 May 2025¹, the Authority determined that the applicant, Ms Rach Stillman, was unjustifiably dismissed and was entitled to receive

¹ [2025] NZERA 239

remedies of a payment of \$20,000 without deduction, payable within 28 days of the date of that determination.

[2] Ms Stillman has not been paid that sum by the respondent Brother Coffee Limited (Brother Coffee). Ms Stillman now seeks a compliance order in accordance with s 137(1)(b) of the Employment Relations Act 2000 (the Act), requiring Brother Coffee to pay the total amount to her. She also seeks orders against the other three named respondents in accordance with s 137(2) of the Act, that they are directed to take actions to ensure Brother Coffee makes the necessary arrangements and pays the total amount owing to Ms Stillman.

[3] Brother Coffee acknowledges the debt owing to Ms Stillman and that it has not paid her. It states that it does not oppose the making of compliance orders against it, but it has no money and therefore the orders will not have any practical effect.

[4] The second respondent Mr Bryn Evans, the third respondent Ms Halle Evans, and the fourth respondent Mr Robert Dai Evans, are the directors of Brother Coffee and have also filed a statement in reply. They acknowledge the debt owing to Ms Stillman, and again say that Brother Coffee has no assets, and therefore they are unable to ensure that it pays Ms Stillman. They oppose the making of compliance orders against them on this basis.

The Authority's investigation

[5] The parties agreed that the matter could properly be dealt with on the papers. For the Authority's investigation, both parties provided written submissions. Ms Stillman and Ms Halle Evans each provided a sworn affidavit.

[6] As permitted by s 174E of the Employment Relations Act 2000 (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

[7] The issues requiring investigation and determination were:

- (a) Should compliance orders requiring Ms Stillman be paid the sum of \$20,000 be made against Brother Coffee under s 137(1)(b) of the Act?

- (b) Should compliance orders requiring the action of this payment to Ms Stillman by Brother Coffee be made against the second, third, or fourth respondents under s 137(2) of the Act?
- (c) Should either party contribute to the costs of representation of the other party?

Background

[8] There is no dispute between the parties that Ms Stillman is entitled to be paid the sum of \$20,000 by Brother Coffee, and that it has not paid her.

[9] Although it takes the position that it does not object to the making of compliance orders against it, Brother Coffee says it has no assets and no ability to pay Ms Stillman.

[10] The second, third, and fourth respondents are the directors of Brother Coffee. The second and third respondents are also the shareholders of Brother Coffee, holding 50% of its shares each. Brother Coffee remains registered with the Companies Register at the time of making this determination. The third respondent, Ms Evans, says that it was decided not to liquidate the company or remove it from the Companies Register as Brother Coffee had substantial tax losses which “could have been used in the event that Bryn and I wanted to start another business”.

[11] Ms Evans says in her affidavit that Brother Coffee operated a café, which ceased trading in February 2024. She says it made substantial losses in the 2023/2024 year and the 2024/2025 year. It has no assets, in cash or otherwise. It owed her and Mr Bryn Evans “around \$370,000”, being their shareholder current account balance.

[12] Ms Evans says they have told Ms Stillman that there is no money to pay her awards and is critical of her for bringing this compliance action.

[13] Ms Stillman says that she believes there are still assets in the company due to it still being registered on the Companies Register. She also says that she has not taken enforcement action because she views this as costly and “likely to result in no recovery”.

[14] There is a brief reference in submissions filed on Ms Stillman’s behalf indicating that Ms Stillman believes “a family member is now trading out of this site”. No other detail or supporting evidence is provided as to this. I note this is denied by

the respondents, who state that an unrelated business is now trading out of the site formally used by Brother Coffee.

[15] In her affidavit, Ms Stillman requested that the compliance orders extend to the separate costs determination issued by the Authority on 28 August 2025². She also asked that I “...consider whether penalties or other sanctions for non-compliance of two NZERA determinations are appropriate”. The basis on which penalties were sought was not set out other than in the single sentence quoted above. Neither the request for compliance orders in relation to the costs determination, nor the request for penalties was set out in the statement of problem.

[16] Accordingly, I consider that it would not be fair or proper to add these additional claims into this determination when they were first mentioned at a late stage, and have not been fairly and explicitly raised so that the respondents could have a proper chance to respond.

Analysis

Compliance Order against Brother Coffee

[17] The primary claim is that the Authority order that Brother Coffee comply with the Authority’s determination dated 2 May 2025 ordering the sum of \$20,000 to be paid to Ms Stillman. Section 137(1)(b) of the Act provides for the issuing of a compliance order where any person has not observed or complied with an order or determination of the Authority.

[18] Here, Brother Coffee has not complied with the Authority’s determination requiring it to pay the sum of \$20,000 to Ms Stillman within 28 days of 2 May 2025. It (properly) accepts that it has not done so, and does not object to a compliance order being issued against it.

[19] There is clearly failure to pay which would support a compliance order. The question then becomes whether a compliance order should be issued. Although Brother Coffee states that it has no assets and cannot pay Ms Sillman, it remains on the Companies Register, which as its directors explain was a deliberate choice. Orders can be made against it. My view is that claimed non-ability to pay is a matter for any

² [2025] NZERA 537.

subsequent enforcement action, and should not prevent the issuing of a compliance order.

[20] A compliance order against Brother Coffee is made accordingly.

Compliance Orders against the second, third, and fourth respondents

[21] I have also been asked to make orders against the second, third, and fourth respondents, requiring them to ensure Brother Coffee “arranges funds and pays the total amount payable to Ms Stillman”. This claim is made in accordance with s 137(2) of the Act.

[22] Section 137(2) of the Act provides that the Authority may “by order require, in or in conjunction with any matter before the Authority under this Act to which that person is a party or in respect of which that person is a witness, that person to do any specified thing or to cease any specified activity, for the purpose of preventing further non-observance of or non-compliance with” a determination of the Authority.

[23] The third and fourth respondents state that as they were neither party to the original matter, nor were they witnesses in the original matter, compliance orders cannot be made against them.

[24] I find that this is not a correct statement of the law. The second, third and fourth respondents have been made aware of the claims against them, by being named as parties in and to this compliance action, and they have been given the opportunity to be heard on this compliance action. They have participated by the filing of legal submissions on their behalf which are separate and distinct from the response provide by Brother Coffee, and the filing of an affidavit by Ms Evans.

[25] As *both Northern Clerical Workers Union v Lawrence Publishers Co of New Zealand Ltd*³ and *Allen Chambers Ltd v Pelabon*⁴ make clear, the Authority is then required to consider whether it is within the power of the second, third, and fourth respondents to put Brothers Coffee in a position where it can fulfil the orders made against it⁵. As directors of the first respondent company, it is the directors, and only

³ [1990] 1 NZILR 717

⁴ [2019] ERNZ 64

⁵ *Ibid*, at [47].

the directors, who are able to ensure actions are taken by the company. As the Court has stated, this is not a question of making “payment of a respondent’s debt from their own pockets, but to take the steps which were in their power to ensure that the liability was met by the person upon whom the liability fell”⁶.

[26] I find that the directors of Brothers Coffee may properly be ordered to take the necessary steps to ensure that the company makes payment to Ms Stillman as required by the substantive determination of the Authority.

[27] It is further submitted on behalf of the second, third, and fourth respondents that compliance orders should not be made against them because Brother Coffee does not have any funds available. It has provided a financial report for the year ended 31 March 2024, to support this statement. However, I take the view that this remains a matter for enforcement action, if and when any occurs.

[28] Ms Stillman is entitled to the orders that she seeks, and it is appropriate that they are made against the directors as well as the company itself.

Orders

[29] An order is made pursuant to s 137(1)(b) of the Employment Relations Act 2000 that Brother Coffee Limited pay to Ms Rach Stillman within 28 days of the date of this determination the sum of \$20,000.00 in compliance with the Authority’s determination of 2 May 2025.

[30] An order is made pursuant to s 137(2) of the Employment Relations Act 2000 that the directors of Brother Coffee Limited as of the date of this determination, that is, Mr Bryn Robert Evans, Ms Halle Marie Evans, and Mr Robert Dai Owen Evans, ensure that Brother Coffee Limited pays to Ms Rach Stillman within 28 days of the date of this determination the sum of \$20,000.00 in compliance with the Authority’s determination of 2 May 2025.

⁶ [1990] 1 NZILR 717, at paragraph 19.

Costs

[31] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves, and I note my initial view that a costs order equivalent to half of the usual daily tariff would likely be appropriate.

[32] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the applicant may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum the respondents will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[33] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.⁷

Claire English
Member of the Employment Relations Authority

⁷ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1