

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

**[2026] NZERA 180
3422045**

BETWEEN MOKOIA INTERMEDIATE
SCHOOL BOARD
Applicant
AND
JANET DU FALL
Respondent

Member of Authority: Eleanor Robinson
Representatives Joe Williams, counsel for the Applicant
Russell Du Fall, representing the Respondent
Submissions: 25 February and 20 March 2026 from the Applicant
13 March 2026 from the Respondent
Investigation Meeting On the papers
Determination: 25 March 2026

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] The Applicant, Mokoia Intermediate School Board (MISB), has applied to the Authority under s 137 of the Employment Relations Act 2000 (the Act) for a compliance order requiring the Respondent, Janet Du Fall, to comply with the terms of the determination given by the Authority on 16 September 2025 (Determination [2025] NZERA 572).

[2] During a case management conference to discuss the process for addressing the compliance order application by MISB, it was agreed by the parties that this matter would be determined on the papers.

Brief Background

[3] In the determination issued on 16 September 2025 (Determination [2025] NZERA 572), the following orders were made by the Authority :

- a) MISB was to pay Ms Du Fall a total sum of \$9,247.16 gross in respect of wage and holiday arrears; and
- b) Ms Du Fall was to pay MISB the sum of \$20,000 as a contribution to costs.

[4] On 17 September 2025 MISB wrote to Ms Du Fall and suggested that the most straightforward way to proceed was for Ms Du Fall to pay MISB the sum resulting from the balance of the two amounts, being \$10,425.22.

[5] This suggestion was not agreed by Ms Du Fall, and accordingly MISB made payment of the monies it was determined to owe to Ms Du Fall on 14 October 2025.

[6] MISB wrote to Ms Du Fall on 15 October 2025 advising:

- i) It had paid the arrears owed to her, including withholding her applicable PAYE tax as it was required to do. It also provided to her a breakdown of the tax deductions made for her reference;
- ii) Noted that Ms Du Fall's challenge to the determination did not operate as a stay and directing her to s 180 of the Act; and
- iii) Requiring her to pay the \$20,000 she owed MISB within 7 days.

[7] MISB has not received payment of the sum awarded to it and is seeking a compliance order.

[8] Mr Du Fall has made submissions including that:

- i) MISB did not comply with the orders within Determination [2025] NZERA 572 to make payments to Ms Du Fall as required;
- ii) There was a significant matter of public interest involved in the proceedings which benefitted the School's insurer;
- iii) MISB did not respond to Ms Du Fall's requests for information sufficient to substantiate its compliance with those orders in favour of her; and
- iv) Ms Du Fall was not aware of such requests because the incorrect email address was used.

[9] It is further submitted for Ms Du Fall that the Authority could order a stay on the costs award pending an application to the Employment Court for security of costs and/or a stay pending the outcome of a de novo hearing by the Court with costs for the Authority determination being dealt with by the Court. In addition, that there was a matter of significant public interest involved because the School's insurer acted in its own best interests

Compliance Order

[10] The compliance application arises from a determination 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 almost seven months since Determination [2025] NZERA 572 was issued.

[11] MISB has made payments of the sum ordered to be paid to Ms Du Fall. Even if I were to accept that Ms Du Fall was unaware of MISB's demands for payment because of an incorrect email address usage, that does not lessen the requirement on her to have paid what she was ordered to pay to MISB.

[12] Moreover, I observe that the claimed incorrect address had been used by Ms Du Fall in Authority proceedings, and she would have been aware that MISB had fulfilled its part of the Authority's orders and her own fulfilment of the order was outstanding..

[13] Pursuant to s 180 of the Act, an election by a party to challenge a determination of the Authority does not act as a stay on the determination, unless so ordered by the Authority or the Court. There has been no application for a stay lodged with the Authority.

[14] Arrangements between MISB and an insurance company are not relevant to this application for a compliance order.

[15] I am satisfied that Ms Du Fall has not complied with the terms of Determination [2025] NZERA 572.

[16] It is just in the circumstances for an order to be made requiring Ms Du Fall to comply with the Authority's determination.

[17] MISB is seeking interest on the amount ordered as costs from 14 October 2025 until payment is made in full. It has been deprived of the benefit of what was awarded to it for some months and I consider this appropriate.

[18] MISB is also seeking a penalty for non-compliance with the Authority's determination. Whilst a penalty is available for breach of an agreed term of settlement reached pursuant to s 149 of the Act, there is no similar provision in respect of non-compliance with an authority determination.

Orders

[19] **Ms Du Fall is ordered to pay MISB the following sums:**

1. **\$20,000.00 in respect of costs pursuant to Determination [2025] NZERA 572;**
2. **Interest on the costs award due in accordance with Schedule 2 of the Interest on Money Claims Act 2016 from 14 October 2025 until payment is made in full.. A calculator to assist in the calculation of interest is available on the Ministry of Justice website;**
3. **\$2,250 to MISB as a contribution to its legal costs incurred in this application for the Compliance Order; and**
4. **\$71.56 reimbursement of the filing fee.**

[20] Ms Du Fall is ordered to comply as ordered above within 14 days of service of this determination.

Eleanor Robinson
Member of the Employment Relations Authority