

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2026] NZERA 209
3391884

BETWEEN ALI GENCER
 Applicant

AND YA HA LIMITED
 First Respondent

AND FADIME YILMAZ
 Second Respondent

Member of Authority: David G Beck

Representatives: Jordan Bottreill, advocate for the Applicant
 Paul Brown, counsel for the Respondent,

Investigation Meeting: On the papers

Submissions Received: 6 March 2026 from the Applicant
 17 March 2026 from the Respondent

Date of Determination: 7 April 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In a determination issued on 12 December 2024, the Authority found Ali Gencer had been unjustifiably disadvantaged and unjustifiably dismissed and ordered Ya Hay Limited to pay Mr Gencer:

- (i) \$9,864.69 gross wage arrears inclusive of holiday pay pursuant to s 131 Employment Relations Act 2000.
- (ii) \$6,300 (gross) lost wages pursuant to s 123(1) (b) Employment Relations Act 2000.

(iii) \$14,000.00 compensation without deduction pursuant to s 123(1)(c)(i) Employment Relations Act 2000.¹

[2] In a further cost determination of 24 January 2025, the Authority ordered that Ya Hay Limited pay Mr Gencer a contribution to his legal costs in the sum of \$3,000 and that Ya Hay Limited also pay Mr Gencer's Authority filing fee of \$71.55.²

[3] The above compensatory awards and costs have not been paid by Ya Hay Limited and Mr Gencer seeks compliance orders pursuant to section 137 Employment Relations Act 2000 ("the Act") against Ya Hay Limited and an order that Fadime Yilmaz takes steps to ensure Ya Hay Limited meets an order of the Authority. In a statement in reply, Ya Hay Limited conceded Mr Gencer was entitled to a compliance order pursuant to s 137(1)(b) of the Act against Ya Hay Limited but suggested Fadime Yilmaz was not involved in the non-compliance.

The Authority's investigation

[4] The representatives agreed to allow the Authority to determine this issue by submissions only and the parties subsequently filed submissions on 6 and 17 March 2026.

[5] Pursuant to s 174E of the Employment Relations Act 2000 ("the Act"), I make findings of fact and law and outline conclusions to resolve the disputed issue and make orders, but I do not record all details of submissions received.

The submissions

[6] Mr Gencer's advocate detailed that Ya Hay Limited has taken no steps to meet the various orders of the Authority detailed above. While acknowledging that Ya Hay Limited had conceded a compliance order was appropriate, it was contended that Fadime Yilmaz who is the sole director and shareholder of Ya Hay Limited has control over the company's finances and was involved in the circumstances that led to Mr Gencer's dismissal and should therefore be ordered to place the company in a position to meet the Authority orders. Further, Mr Gencer's advocate suggested Ms Yilmaz has personal liability under s 142Y of the Act as she was a person involved

¹ *Ali Gencer v Ya Hay Limited* [2024] NZERA 737.

² *Ali Gencer v Ya Hay Limited* [2025] NZERA 39.

in the breaches and should be liable for the failure to pay the wage arrears being a breach of employment standards.

[7] In contrast, Ya Hay Limited's counsel, while advancing no reasons for the non-compliance by Ya Hay Limited, contested that Ms Yilmaz had insufficient authority and that the business and decision-making was the preserve of her husband Halit Yilmaz.

Finding

[8] I find there was insufficient evidence advanced to establish that Fadime Yilmaz should be held personally liable for the identified breaches, but it is appropriate under s 137(2) of the Act to order that Fadime Yilmaz as sole director and sole shareholder, should take active steps to ensure Ya Hay Limited can meet the compliance orders that they have accepted as being appropriate.

Order

[9] By order of the Authority under section 137 Employment Relations Act 2000, Ya Hay Limited is to comply with the orders made in determinations [2024] NZERA 737 and [2025] NZERA 39 by paying Ali Gencer:

- (a) \$9,864.69 gross wage arrears inclusive of holiday pay pursuant to s 131 Employment Relations Act 2000.
- (b) \$6,300.00 (gross) lost wages pursuant to s 123(1) (b) Employment Relations Act 2000.
- (c) \$14,000.00 compensation without deduction pursuant to s 123(1)(c)(i) Employment Relations Act 2000
- (d) Costs of \$3,000 and the Authority filing fee of \$71.55.

[10] Fadime Yilmaz is to take active steps to ensure Ya Hay Limited has sufficient funds to meet the above orders.

[11] Pursuant to s 137(3) of the Employment Relations Act 2000 the above orders are to be met by no later than 30 April 2026.

Costs

[12] Costs for this application are at the discretion of the Authority and here Ali Gencer was successful in his action for a compliance order and has sought a costs contribution to prepare this application and prepare a submission. I fix that amount at \$750 to be paid by Ya Hay Limited to Ali Gencer. I also order Ya Hay Limited to pay Ali Gencer a filing fee of \$71.55.

David G Beck
Member of the Employment Relations Authority