IN THE COURT OF APPEAL OF NEW ZEALAND

CA227/2015
[2016] NZCA 464

BETWEEN	PETER REYNOLDS MECHANICAL LTD TRADING AS THE ITALIAN JOB SERVICE CENTRE Appellant
AND	JAMES DENYER, LABOUR INSPECTOR Respondent

Hearing:	12 July 2016
Court:	Ellen France P, Randerson and Kós JJ
Counsel:	I M Hutcheson for Appellant S P Jerebine and E Lay for Respondent D J Boldt as Counsel Assisting
Judgment:	28 September 2016 at 2.30 pm

JUDGMENT OF THE COURT

A The appeal is allowed.

B The judgment of the Employment Court is set aside.

C The order for the appellant to pay a fine of $5,500 is set aside and a fine of $750 is substituted.

D The respondent must pay the appellant $1,500 for costs in this Court plus usual disbursements.

E Costs in the Employment Court are a matter for that Court to fix, failing agreement.

REASONS OF THE COURT

(Given by Ellen France P)

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Introduction

[1] Peter Reynolds Mechanical Ltd (the appellant) appeals against the imposition of a fine of $5,500 under s 140(6)(d) of the Employment Relations Act 2000 (the Act) by Judge Inglis in the Employment Court.[1] The fine was imposed for non-compliance with a compliance order of the Employment Relations Authority (the Authority). By the time the Employment Court imposed the fine, the appellant had complied and paid the respondent (on behalf of a former employee, Gareth Costa) $1,568.80 for holiday pay and interest and a filing fee as ordered by the Authority.[2]

[2] The issues arising on the appeal are as follows:

(a) Is there jurisdiction to impose a fine under s 140(6)(d) when non-compliance relates to a monetary order?

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1 *Denyer v Peter Reynolds Mechanical Ltd* [2015] NZEmpC 41 [Employment Court decision].

2 *Denyer v Peter Reynolds Mechanical Ltd* [2013] NZERA Auckland 460 [Employment Relations Authority decision].

(b) If there is jurisdiction, when is it appropriate to exercise that jurisdiction?

(c) What are the considerations relevant to the measure of the fine? And;

(d) Was the fine imposed in the present case set at an appropriate level?

[3] We deal with each issue in turn after setting out the background.

Short payment of holiday pay

[4] The appellant company is an owner-operated company run by Peter Reynolds. Its business is servicing and repairing motor vehicles.

[5] The company employed Mr Costa as a mechanic for about three years from 20 June 2009. When he left his employment, Mr Costa received $1,332 in holiday pay. Subsequently he complained to the respondent, a Labour Inspector, that he had not been paid sufficient holiday pay. The Inspector convened a meeting in February/March 2013 but this did not resolve the claim. Mr Reynolds was asked to provide further information about the leave Mr Reynolds said Mr Costa had taken. The Inspector subsequently gave Mr Reynolds notice that a recovery claim would be commenced if that information was not provided by 15 April 2013.

[6] There was some debate about whether information had been provided. Then, on 23 April 2013 the Inspector wrote to Mr Reynolds and advised that Mr Costa was owed an additional $1,642.80 gross holiday pay. Payment was requested within 14 days. The Inspector said he could not deal with other matters raised by both Mr Costa and Mr Reynolds about other claims, for example, by Mr Reynolds for damage he said Mr Costa had done to the company's property. No payment was made.

[7] The respondent brought a claim before the Authority for the outstanding holiday pay. What happened next is summarised in the table which follows.

Date	Event
25 June 2013	Authority investigation meeting (Mr Reynolds present). Meeting adjourned to allow Mr Reynolds further opportunity to supply wage and time records to the Inspector and to outline his position.
9 July 2013	The Authority extended the time for Mr Reynolds to provide wage records and supporting material. On the same day, Mr Reynolds emailed the Inspector attaching a seven-page statement setting out the appellant's view on the wage/holiday pay position as between the appellant and Mr Costa. That included assertions by the appellant about the quality of work undertaken by Mr Costa and a claim the appellant had in fact overpaid Mr Costa over $470 including $254.56 holiday pay.
10 July 2013	Mr Reynolds provided further material to the Inspector.
3 October 2013	Authority investigation meeting resumes (Mr Reynolds not present).
3 October 2013	The Authority issued determination and ordered the appellant to pay the respondent $1,568.80 for Mr Costa's outstanding holiday pay, interest, and a filing fee.[3] Mr Reynolds accepted he received notice of this hearing but said he had been advised he was not entitled to appear because he had not filed a statement of reply as directed. He was unable to locate the document giving him that advice. Mr Reynolds did not comply.
4 November 2013	The Inspector applied to the Authority for a compliance order. Mr Reynolds received this application.
3 December 2013	The Authority issued first compliance order.[4] Mr Reynolds was not present at the hearing on 3 December. The money was to be paid by 10 December 2013.
7 February 2014	A fresh compliance order was made because the first order (3 December 2013), incorrectly named Mr Reynolds rather than the appellant as the employer. Under this new order the date for compliance was 14 February 2014. Mr Reynolds accepted he received this corrected order although only when he picked up an envelope lying on the pavement outside a neighbouring business.
20 February 2014	Mr Reynolds spoke to a Ms Debbie Marsh at the Authority.
23 February 2014	Mr Reynolds wrote to the Authority. He said he was more than willing to attend a hearing but needed some assistance or direction about completing the paperwork correctly. He recorded he understood he had 28 days to respond to the letter of 7 February 2014.
6 June 2014	The Inspector filed a statement of claim in the Employment Court seeking an order that the appellant be fined under s 140(6) and an order for costs. Mr Reynolds accepted he received notice of the hearing.

3 Employment Relations Authority decision, above n 2.

4 *Denyer v Peter Reynolds Mechanical Ltd* [2013] NZERA Auckland 554.

24 July 2014	The Employment Court heard the Inspector's application at 12 noon. The Court (Chief Judge Colgan) fined the appellant $8,000 and ordered it to pay costs of $250 and the filing fee of $306.67. Mr Reynolds arrived at the Court at 2 pm under the misapprehension the application was to be heard then and was told he would need to apply for a rehearing.
21 August 2014	The appellant applied for a rehearing of the s 140(6) application and a stay of execution pending the rehearing.
4 September 2014	The appellant paid the respondent the amount ordered in the Authority's compliance order.
8 September 2014	Unopposed by the Inspector, Chief Judge Colgan granted a rehearing.
13 February 2015	Rehearing of s 140(6) application.
31 March 2015	Judge Inglis ordered the appellant to pay a fine of $5,500.

Employment Court decision

[8] Judge Inglis accepted that the compliance order made by the Authority did not "draw attention to the strict nature of the obligation" or refer to the Court's power under s 140 of the Act.[5] But, the Judge said, "it must have been abundantly plain [to the appellant] that matters had progressed to a serious stage".[6] The Judge noted Mr Reynolds' evidence that he accepted personal responsibility for not handling the situation better but the Judge said she was unable to detect any "real remorse".[7]

[9] Judge Inglis also noted Mr Reynolds' evidence that the fine would have a serious impact on the company but noted he had not provided any detail on its financial state. There was nothing to suggest the appellant had previously breached a compliance order. The Judge concluded a fine of $5,500 was appropriate:[8]

> It is very clear that the company failed to comply with the Authority's compliance order. While there have been a number of excuses proffered in relation to particular aspects of the process (such as non-delivery of documents and misunderstandings as to process) there has been no adequate explanation for the ongoing nature of the default. I am satisfied on the basis of the evidence before the Court that little effort has been expended in substantively addressing the company's obligations to its previous employee, over a considerable period of time. It is necessary to mark out the company's conduct, including to send a message to others.

5 Employment Court decision, above n 1, at [29].
6 At [29].
7 At [34].
8 At [37].

Relevant provisions

[10] Both the Authority and the Employment Court have power to make compliance orders.

[11] The Authority's power under s 137 to order compliance applies "where any person has not observed or complied with" any of the specified provisions or with any order made by the Authority.[9] A broad range of provisions are specified in s 137(1)(a), including a failure to observe or comply with:

> (a) any provision of—
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> (i) any employment agreement; or
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> (ii) Parts 1 [key provisions], 3 to 6 [freedom of association, recognition and operation of unions, collective bargaining, and individual employees' terms and conditions of employment], 6A (except subpart 2) [pt 6A deals with continuity of employment if work is affected by restructuring and subpt 2 deals with the disclosure of information about the transfer of employees], 6B [bargaining fees], 6C [breastfeeding], 6D [rest and meal breaks], 7 [employment relations education leave] and 9 [personal grievances]; or
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> (iii) any terms of settlement or decision that section 151 [enforcement of terms of settlement] provides may be enforced by compliance order; or
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> …
>
> (iv) a demand notice that section 225(4) provides may be enforced by compliance order; or …[10]

[12] Section 137(2) gives the Authority the power to require compliance. Subsection (2) states that where the section applies, the Authority may, by order require parties or witnesses:

> … to do any specified thing or to cease any specified activity, for the purpose of preventing further non-observance of or non-compliance with that provision, order, determination, direction, or requirement.

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9 Employment Relations Act 2000, s 137(1).

10 Section 137(1)(a) also captures provisions from other statutes, for example, ss 56, 58, 77A and 77D of the State Sector Act 1988 which set out, amongst other things, general principles and equal employment opportunities provisions relating to the state sector: s 137(1)(a)(v).

[13] The Authority must specify a time in which the compliance order must be obeyed.[11]

[14] Section 137(4) sets out the persons who may apply for a compliance order.

[15] Under s 138(1) of the Act, the power to order compliance may be exercised by the Authority of its own motion or on the application of any party.

[16] Section 138(4) provides that a compliance order may be made subject to terms and conditions and may be expressed to continue in force until a specified time or the happening of a specified event.

[17] In 2004, the Act was amended by the addition of s 138(4A) which provides that:

> 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.

[18] The Authority, having made a compliance order, may then adjourn the matter without imposing any penalty or making a final determination so that the compliance order can be complied with during the adjournment.[12]

[19] Section 138(6) makes it clear that if there is non-compliance with a compliance order "the person affected by the failure may apply to the court for the exercise of its powers under s 140(6)". That is the power in issue in this case.

[20] The power of the Employment Court to order compliance is set out in s 139. That section applies where any person has not observed or complied with any provision of pt 8 dealing with strikes and lockouts, or with any order of the Court.[13]

[21] The Court, like the Authority, has power to order a person to do any specified thing or to cease any specified activity "for the purpose of preventing further

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11 Section 137(3).
12 Section 138(5).
13 Section 139(1).

non-observance of or non-compliance" with any provision or order. The Court is obliged to specify the time within which the compliance order is to be obeyed.[14]

[22] Section 140 contains further provisions relating to the Court making a compliance order. Under subs (1) it is made plain that the Court may exercise the power to order compliance on the application of any party or, generally, of its own motion. A compliance order may be made subject to terms and conditions and may be expressed to continue until a specified time or the occurrence of a specified event.[15] Proceedings may be adjourned without imposing any penalty or fine or making a final determination so that a compliance order may be complied with in the interim.

[23] Section 140(6), which is at the heart of the present appeal, provides as follows:

> Where any person fails to comply with a compliance order made under section 139, or where the court, on an application under section 138(6), is satisfied that any person has failed to comply with a compliance order made under section 137, the court may do 1 or more of the following things:
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> (a) if the person in default is a plaintiff, order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceedings:
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> (b) if the person in default is a defendant, order that the defendant's defence be struck out and that judgment be sealed accordingly:
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> (c) order that the person in default be sentenced to imprisonment for a term not exceeding 3 months:
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> (d) order that the person in default be fined a sum not exceeding $40,000:
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> (e) order that the property of the person in default be sequestered.

[24] For present purposes, the other important section is s 141, which deals with the enforcement of an order made by the Authority or the Court. Section 141 provides as follows:[16]

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14 Section 139(4).
15 Section 140(4).
16 Section 141 was amended on 1 April 2016 by s 18 of the Employment Relations Amendment Act 2016.

> Any order made or judgment given under this Act by the Authority or the court (including an order imposing a fine) may be filed in any District Court, and is then enforceable in the same manner as an order made or judgment given by the District Court.

[25] Reference should also be made to the power of the Authority and of the Court in relation to contempt. Section 196(2)(a) gives the Authority or the Court power to detain in custody during a hearing where any person has acted in contempt in the face of the Authority or the Court. A judge of the Court also has power to imprison or fine in the same circumstances.[17]

[26] Finally, there is a right of appeal to this Court against an order made under s 140(6) of the Act. Section 217 permits such an appeal to this Court as if the appellant "were a defendant who had been convicted on a charge and sentenced by the High Court". The appeal accordingly falls to be determined under s 263(2) of the Criminal Procedure Act 2011. The present appeal was initially heard by a Criminal Appeal Division but was reheard by the Permanent Court.[18]

Jurisdiction to impose a fine?

[27] This question arises out of the submission of counsel assisting. Mr Boldt submits that the statutory scheme is that monetary judgments are to be enforced only via the courts of general civil jurisdiction, in particular, by the District Court under s 141 of the Act. In his careful submission Mr Boldt develops this proposition in part by reference to the legislative history of successive statutes regulating employment relations in New Zealand. He also emphasises that imprisonment for non-payment of judgment debts is now not available in New Zealand. The submission is that it would be odd for imprisonment to be available, as a remedy under s 140(6) to enforce a monetary judgment, given the unavailability of the remedy of imprisonment for non-payment of such debts more generally.

[28] On this aspect, for the reasons which follow, we accept the respondent's submission that the Employment Court had jurisdiction to impose a fine for

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17 Section 196(2)(b).

18 *Peter Reynolds Mechanical Ltd v Denyer* CA227/2015, 20 May 2016 (Minute of Wild J: advice to counsel that this appeal is to be reheard). See also *Peter Reynolds Mechanical Ltd v Denyer* CA227/2015, 20 May 2016 (Minute of Wild J: brief for amicus).

non-compliance with the compliance order made in this case. We acknowledge that the legislative history provides some support for Mr Boldt's approach but we rely on the plain wording of s 140(6). In addition, we draw support from both the purpose and scheme of the Act.

The legislative history

[29] Mr Boldt is right that the legislative history reveals that enforcement for non-compliance with monetary orders such as non-payment of wages or holiday pay was for a long period of time to be undertaken only via the courts of general civil jurisdiction. We start with the Industrial Conciliation and Arbitration Act 1894.

[30] The 1894 Act created the Court of Arbitration.[19] The Court had the power to order that a duplicate of any award be filed in the Supreme Court office. The award would then be enforceable in that Court.[20] Where the amount of the award was within the jurisdiction of the District Court or Magistrate's Court, the Supreme Court could order that the award be enforced in the relevant court.[21] Under s 64 of the 1894 Act, the Court of Arbitration had the power to impose a penalty for contempt in the face of the Court.

[31] A broadly similar approach was adopted in the Industrial Conciliation and Arbitration Act 1900,[22] the Industrial Conciliation and Arbitration Acts Compilation Act 1905,[23] the Industrial Conciliation and Arbitration Act 1908[24] and the Industrial Conciliation and Arbitration Act 1925.[25] Enforcement of monetary awards was via the forerunner to the District Court and the Court of Arbitration had the power to punish for contempt in the face of the Court and, from 1900 onwards, to impose a penalty for obstruction of the court (printing or publishing anything to obstruct the Court).[26]

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19 Section 47.
20 Section 75.
21 Section 76.
22 See ss 91, 94, 96, 103 and 104.
23 See ss 97, 101, 103, 112 and 113.
24 See ss 97, 101, 103, 114 and 115.
25 See ss 114, 115, 129, 130 and 135.
26 Industrial Conciliation and Arbitration Act 1900, s 104.

[32] For the first time, the Industrial Conciliation and Arbitration Act 1954 provided that the Court of Arbitration was a court of record.[27] Relevantly for present purposes, s 199 of the 1954 Act provided that breaching an award could result in liability for a monetary penalty and such penalties were generally recoverable in the Magistrate's Court.[28] Section 206 provided that an inspector could bring an action for recovery in the Court of Arbitration rather than the Magistrate's Court but, generally, enforceability for monetary awards was via the Magistrate's Court.

[33] The position was broadly the same under the Industrial Relations Act 1973 although s 47(2)(d) gave the Court (now the Industrial Court) power to make a compliance order.[29] Under s 154 of that Act, when the Court ordered the payment of a sum of money, the judgments were to be enforced in the Magistrate's Court in the same way as judgments given in that Court. Section 154 also provided that "no proceedings shall be taken under the Imprisonment for Debt Limitation Act 1908 against any person for failing or refusing to pay any penalty or other sum of money due by him under this Act".

[34] This Court in *Quality Pizzas Ltd v Canterbury Hotel Employees Industrial Union* confirmed that the Arbitration Court under the 1973 Act had power to punish for contempt in the face of court only.[30] Justice Richardson, delivering the judgment of the Court, said:[31]

> [The Arbitration Court] has been established as a Court of record and has all the powers inherent in a Court of record (s 32). But it is not a superior Court. The inherent supervisory jurisdiction of the High Court over inferior tribunals and Courts to compel them to keep within their jurisdiction … is expressly recognised in s 48(6). … And the only contempt power now reposed in the Arbitration Court under the statute is in respect of contempt in the face of the Court or of a conciliation council in respect of which the only penalty provided is a fine not exceeding $100 (s 145). Section 146, the counterpart of s 115 of the 1925 Act which was before the Court in *Attorney-*

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27 Industrial Conciliation and Arbitration Act 1954, s 13(1).

28 Section 200(1).

29 The authors of Philip Bartlett and others *Employment Law* (looseleaf ed, Brookers) at [ER139.01(1)] note that as the Court observed in *New Zealand Harbours Industrial Union of Workers v Auckland Harbour Board* [1988] NZILR 154 (Labour Court) at 157 "[the power] was rarely used … [and] did not have any teeth".

30 *Quality Pizzas Ltd v Canterbury Hotel Employees Industrial Union* [1983] NZLR 612 (CA) at 617. Inferior courts of record have jurisdiction at common law only to deal with contempts committed in the face of the court: David Eady and ATH Smith (eds) *Arlidge, Eady & Smith on Contempt* (4th ed, Sweet & Maxwell, London, 2011) at [13–7].

31 At 617.

> *General v Blundell*, was repealed in 1981 and in that way the statutory jurisdiction of the Arbitration Court to punish for contempt has been deliberately narrowed.

[35] The Labour Relations Act 1987 carried forward the provisions relating to the enforcement of monetary judgments. Section 198 made it clear that an employee could bring an action against an employer for non-payment of wages "or other money". Enforcement of judgments was provided for by s 205, which stated that a certificate from the Labour Court specifying the amount payable may be filed in the District Court and was then "enforceable in the same manner as a judgment given by the District Court in an action for debt recovery".

[36] The key new provision was s 207. This is the predecessor to ss 137 and 140 of the current Act. Under s 207, the Labour Court had power to order compliance following non-compliance with any provision of the Act or of any award or agreement or Court order. Relevantly, s 207(7) stated that where any person failed to comply with a compliance order made under the section, the Labour Court was permitted to make the same orders now provided for under s 140(6), including the imposition of a fine to a maximum of $5,000, imprisonment for up to three months, and sequestration of property.[32]

[37] In addition s 208, which equates with the current s 141, provided that any order made under s 207 may be filed in the District Court and was then enforceable in that Court. These new provisions were reflected in s 186(g), which stated that one of the objects of the relevant part of the Act was to establish that "decisions of dispute committees and of the Labour Court are enforceable in the Labour Court by giving the Labour Court power to order compliance".

[38] Under a heading directed at the enforcement of awards and agreements, the explanatory note to the Labour Relations Bill 1986 explained that:[33]

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[32] Section 207(7)(c)–(e). The authors of *Employment Law*, above n 29, at [ER139.01(1)] observe that this power was "more comprehensive" than that under the 1973 Act and it "abrogated the common law principle that, in general, contracts of service cannot be specifically enforced". This Court in *New Zealand Airline Pilots' Association v Labour Court* CA66/88, 20 July 1988 at 6 noted that in this way the Act had been "strengthened".

[33] Labour Relations Bill 1986 (93-1) (explanatory note) at vi (emphasis added). See also the brief references to the new provision by the Minister of Labour on introduction (18 December 1986) 477 NZPD 6428 and on the second reading (12 May 1987) 480 NZPD 8922.

> To effect compliance with an award or agreement, the Bill provides for any party to the award or agreement to seek from the Labour Court an order for compliance with the provisions of the Act or of the award or agreement. A penalty may be imposed for any breach and wages may be recovered before the Labour Court. *Where a penalty is not paid, or wage arrears are not paid, an order for compliance will be able to be obtained.* Should a compliance order not be obeyed, the Labour Court will have power to deal with the non-compliance.

[39] A similar approach was adopted in s 56 of the Employment Contracts Act 1991 giving the Court power to order compliance similar to that in s 207. But the new s 58 effectively combined the old ss 205 (enforcement of judgments in District Court) and 208 (enforcement of compliance orders in District Court). Section 58 provided that any order made under the Act by the Employment Tribunal or the Employment Court, which included an order imposing a fine, may be filed in any District Court and was then enforceable in that Court. As Mr Boldt's written submissions record, this signalled the disappearance of the "clear demarcation, for the purposes of enforcement, between money judgments and non-monetary orders".

[40] There is some support for Mr Boldt's submission that Parliament did not intend to change the way in which orders were enforced in the material provided by the Department of Labour to the select committee on the Employment Contracts Bill. The "Analysis" paper noted that various aspects of enforcement were "similar" to those under the Labour Relations Act including the recovery of wages and compliance orders.[34]

[41] The Departmental report also commented on the role of cl 47 of the Bill dealing with the enforcement of orders in response to a submission that the District Court and Labour Court had inconsistent rules of evidence. The Department explained:[35]

> The fact that the District Court may enforce the order or judgment has no effect on its content. The clause provides for the District Court to be able to

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[34] *Employment Contracts Bill: Analysis* (March 1991) at 4. There were some changes to the Bill at the select committee stage reflecting the establishment in the Bill as reported back of the Employment Tribunal. See also Kit Toogood and Phillipa Muir "Employment Contracts Bill" (New Zealand Law Society seminar, April–May 1991) at [5.9] where the list of orders "susceptible to enforcement" via the District Court includes orders made for payment of a fine for failure to comply with a compliance order and see [5.8.10].

[35] *Employment Contracts Bill: Report of the Department of Labour to the Labour Select Committee* (April 1991) at 119.

> enforce orders or judgments of the Labour Court for reasons of operational efficiency, such as the District Court having necessary resources (eg bailiffs).

[42] We agree with Mr Boldt that this legislative history helps place the current provisions relating to compliance in context. It is perhaps not surprising provision was made for enforcement via the courts of general civil jurisdiction given the broader array of enforcement mechanisms available under that route.[36] Further, for a considerable period of time a distinction was maintained for enforcement purposes between monetary and other judgments but, importantly, that distinction was ultimately not maintained. It appears likely that the forerunner to s 140(6) was introduced because otherwise the power of the courts in the employment jurisdiction to enforce their own orders and so ensure compliance was limited.[37] That purpose is instructive in considering when the powers in s 140(6) should be exercised. But, on the question of the Court's jurisdiction the text is clear. We turn to discuss the text.

The text

[43] On its face, s 140 provides for the enforcement of compliance orders by a fine or by the other mechanisms, such as imprisonment and sequestration, set out in subs (6). The section makes no distinction between the underlying monetary or other orders in this respect. While s 141 provides another option for enforcement, clearer words would be necessary to conclude that is the only option for the enforcement of monetary awards.

[44] In construing this part of the Act, it is important that the mechanisms in s 140(6) are directed to the failure to comply with a compliance order albeit the failure triggering the order to comply in a case such as the present is non-payment of

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[36] Gordon Anderson and others (eds) *Mazengarb's Employment Law* (looseleaf ed, LexisNexis) at [ERA141.3] cites from *NZ Railways Corp v NZ Seamen's Union IUOW* [1989] 2 NZILR 613 (Labour Court) at 331 in which Chief Judge Goddard made the point it would be "inefficient to create an enforcement structure" within the Labour Court registry; and see *Employment Law*, above n 29, at [ER137.21(2)].

[37] Goddard CJ in *Schuch v McCabe* [1998] 3 ERNZ 1145 (EmpC) at 1152 refers to Parliament's "reaction, by way of confirmation", to the judgment of this Court in *Quality Pizzas*, above n 30.

a monetary sum. That is a distinction with a difference. Judge Colgan made this point in *Feather v Payne.*[38] As the Judge said:[39]

> There is of course a difference between imprisonment for an unpaid debt and a criminal sanction for disobedience to an order of a Court that the debt or other obligation be discharged by a particular time or in a particular way.

[45] Mr Boldt relies on concerns expressed by the Employment Court in the context of the 1987 Act about using the compliance procedure to enforce a claim for wage arrears rather than what the Court described as a "normal recovery of arrears procedure".[40] Judge Nicholson said that the compliance order was designed, amongst other things, to enforce compliance with the terms of awards. The Judge observed:

> Under section 207(7) … , a sentence of three months' imprisonment or a fine of $5,000 can be imposed and a respondent's property can be sequestered. These are scarcely appropriate for an ordinary claim for a liquidated sum of wage arrears.

[46] However, it is relevant that Judge Nicholson could envisage that:[41]

> … widespread and persistent failure to pay numbers of workers on a payroll the monies required to be paid by an employer under an award, could justify employment of s 207(7) to remedy the situation, but it is a remedy of a special kind with severe consequences following on failure to observe a compliance order.

In addition, as Mr Boldt properly drew to our attention, the Employment Court in *Northern Clerical IUOW v Lawrence Publishing Co of New Zealand Ltd* affirmed that the power to require compliance with "an order" in the predecessor to s 140 in the 1987 Act included a monetary order.[42] Judge Finnigan was dealing with an application relating to an order for payment of just over $700 as settlement of a personal grievance. After some time and an unsuccessful attempt to recover the sum in the District Court, the applicant had sought a compliance order. The employer

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38 *Feather v Payne* EmpC Auckland AEC4/97, 4 February 1997 at 5.

39 At 5. The Imprisonment for Debt Limitation Act 1908 does provide some exceptions to the general rule that no person shall be arrested or imprisoned for making default in payment of a sum of money: see, for example, s 3(2)(b) dealing with default in payment of sums recoverable under the Summary Proceedings Act 1957.

40 *Auckland Dental Technicians IUOW v Taylor* [1988] NZILR 866 (Labour Court) at 867.

41 At 867.

42 *Northern Clerical IUOW v Lawrence Publishing Co of New Zealand Ltd* [1990] 1 NZILR 717 (Labour Court) at 720.

resisted the order on the basis that the Court should not enforce the earlier order by means of a compliance order and that other remedies were available in the general civil jurisdiction. The Court held that the power to require compliance with an order in terms of s 207(1)(b) of the 1987 Act included a monetary order. Compliance orders were made. The Court in that case placed some emphasis on the earlier "unsuccessful resort" to the District Court procedures under the predecessor to s 141.[43]

[47] In *Central Clerical Workers IUOW v Press Bureau Ltd,* Chief Judge Goddard was dealing with an application to have a compliance order enforced by the appointment of a sequestrator.[44] In that case a grievance committee had ordered payment of $1,000 compensation in relation to a successful grievance claim. There had been default for some time and a compliance order made.

[48] Chief Judge Goddard considered that it was appropriate to adjourn the application for the property to be sequestered without deciding the application. The Judge said that the purpose of such an order was "to ensure compliance but it is a remedy of last resort".[45] The Judge said that "[n]ormally I would expect in a case such as this the successful union to take first the more ordinary enforcement steps provided for in s 208 of the Labour Relations Act 1987 through the mechanisms available in the District Court."[46] But there was evidence that "could persuade the Court that there [had] been deliberate defiance and that the only way in which compliance [could] be secured [was] by taking the extreme step of appointing sequestrators".[47] Accordingly, the Court considered it appropriate to adjourn the matter with leave reserved for the applicant to bring the matter on short notice should the default continue for any appreciable length of time after service of the fresh compliance order.

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43 At 721.
44 *Central Clerical Workers IUOW v Press Bureau Ltd* [1990] 2 NZILR 898 (Labour Court).
45 At 899.
46 At 900.
47 At 900.

[49] These cases confirm there is jurisdiction. We acknowledge, however, that the Court's approach supports Mr Boldt's alternative submission, that is, the powers in s 140(6) should be exercised sparingly.

Statutory purpose and scheme

[50] The stated object of the Act includes acknowledging and addressing "the inherent inequality of power in employment relationships".[48] The ability of the Court to ensure compliance with monetary orders of the kind in issue in this case can be seen as a means of addressing that inequality.

[51] In terms of the statutory scheme, we refer first to s 151 of the Act dealing with the enforcement of terms of settlement. Section 151(2) relevantly provides that a matter referred to in subs (1) may be enforced:

> (b) in the case of a monetary settlement, in one of the following ways:
>
> (i) by compliance order under section 137;
>
> (ii) by using, as if the settlement, recommendation, or decision were an order enforceable under section 141, the procedure applicable under section 141.

[52] The section accordingly envisages enforcement of a monetary order via a compliance order as well as by the District Court route.

[53] Secondly, s 223C dealing with the enforcement of undertakings notes that an enforceable undertaking may be enforced by the Authority making a compliance order under s 137.[49] Subsection (3) makes it plain that if the enforceable undertaking relates to a monetary settlement then that undertaking may be enforced by using the procedure applicable under s 141. In our view, that suggests that the procedure under s 140(6) would otherwise have been available.

[54] We add that the new s 140AA of the Act, although not in force at the relevant time, reinforces this view of the statutory scheme. That section provides for the sanctions in s 140(6) to be imposed without a compliance order first being made.

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[48] Employment Relations Act, s 3(a)(ii).
[49] Section 223C(1).

Section 140AA(3)(b)(i) expressly provides that this remedy encompasses monetary debts.[50]

[55] For these reasons, we conclude that the Court has jurisdiction to impose a fine in a case such as the present one.

Considerations relevant to the exercise of the jurisdiction

[56] We have not accepted Mr Boldt's submission on jurisdiction. But the concerns he has raised about the appropriateness of imposing a term of imprisonment, a fine, or ordering the sequestration of property for non-compliance with monetary orders are valid considerations. As a starting point, we agree with the Employment Court that both imprisonment and sequestration should be sanctions of last resort for such non-compliance.[51]

[57] The imposition of a fine does not involve deprivation of liberty but it makes clear that non-compliance with a compliance order is to be taken seriously. This is reinforced by the increase in the maximum sum available for a fine from $10,000 under the 1991 Act to $40,000 in the current Act. Despite that the power must be exercised in its context. That context is an enforcement response for non-compliance in a manner akin to contempt where there is another, less punitive, option for enforcement of the underlying order available via recourse to the District Court under s 141. The desirability of using other options to secure compliance is also reflected in s 159 of the Act, which provides the Authority must first consider the use of mediation when any matter comes before it for determination.

[58] The Employment Court initially took a cautious approach to the imposition of fines to recognise the context in which the power was being exercised. Judge Colgan, for example, in *Feather v Payne* said of the forerunner to s 140(6) that the

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50 This point is also underlined by the new s 3(ab), which introduces the new purpose of promoting "the effective enforcement of employment standards, in particular by conferring enforcement powers on Labour Inspectors, the Authority, and the court".

51 For example, *Feather v Payne*, above n 38, at 5; *Coventry v Singh* [2012] NZEmpC 34 at [18]; *Lin v Zhou* [2013] NZEmpC 159 at [17]; and see Alexander Szakats "*Sequestration: the Labour Court's Power to Order*" (1989) 6 Industrial Law Bulletin 60 at 61. McGechan J in *Taylor Bros Ltd v Taylors Textile Services (Auckland) Ltd* (1988) 1 PRNZ 495 (HC) at 506 suggested the main purpose of the writ of sequestration was coercion, not punishment.

legislature must be taken to have enacted the provisions "with knowledge of the current state of the law of contempt".[52] Thus, the Court could only act if satisfied there:[53]

> … has not only been non-compliance but wilful and deliberate non-compliance as opposed to accidental or involuntary non-compliance or, in the case of an order requiring the payment of a sum of money, simply genuine inability to pay.

[59] That was in part at least because the legislature must be taken to "have been conscious of the fact that it had just recently, … abolished imprisonment for debt".[54] The Judge saw imprisonment, fines or sequestration as measures that "should be and are usually measures of last resort … [where] it has been shown to be impossible by more moderate means to secure compliance with the Tribunal orders".[55]

[60] Mr Boldt referred us to two cases in the 1990s where fines were imposed as a result of judgment debts (of about $1,500 and $8,500 respectively).[56] In both cases the amounts in issue were still outstanding at the time of the penalty hearing. The fines imposed in those cases were $1,000 and $750. In *Drake v Port Wellington Ltd*, a fine of $3,000 was imposed for non-compliance with a provision in the employment contract of the plaintiff marine pilots concerning a minimum level of staffing.[57]

[61] We attach as Appendix 1 a summary of the cases where a fine has been imposed under the current Act. We are grateful to Ms Jerebine for preparing this material. We also attach a graph of the fines awarded and sums in issue as Appendix 2.

[62] The first case referred to in the schedule in Appendix 1, *Finlayson v Kumar*, in fact involved an order for sequestration.[58] Judge Colgan observed that Mr Kumar

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52 *Feather v Payne*, above n 38, at 5.
53 At 5.
54 At 5.
55 At 5.
56 *Edwards v Topo Gigio Restaurant Ltd* EmpC Auckland AEC109/95, 16 October 1995; and *Fitzgerald v Briggs* EmpC Auckland AEC96/95, 25 September 1995.
57 *Drake v Port Wellington Ltd* [1998] 3 ERNZ 104 (EmpC).
58 *Finlayson v Kumar* EmpC Auckland AC44/03, 3 July 2003.

might regard himself as "fortunate" that the Inspector did not seek a fine.[59] The Judge noted that the increase in the maximum fine to $40,000 under the current Act was a "signal from Parliament … that more substantial fines may be required".[60]

[63] That case involved non-payment of holiday pay of $833.41 plus a $500 penalty and interest. No payments had been made despite written and face-to-face requests.[61] By the time the Court came to consider the matter, the monies had been outstanding for nine months since the compliance order. The Court indicated an order for sequestration would be made and the hearing was adjourned to allow the Labour Inspector to make the necessary arrangements.

[64] A similar approach to sequestration was taken in the next case in the Appendix, *Denyer v Les Griffen Ltd*.[62] A fine of $1,500 was imposed where the original sum ordered by the Authority was just over $1,000. The period of non-compliance was eight months.

[65] In *Broeks v Peter Ross* a fine of $1,000 was imposed for what was described as "flagrant disregard" of the processes of the Authority and the Court.[63] The amount in issue was just over $9,400 and comprised arrears in wages, holiday pay and compensation.

[66] An $8,000 fine was imposed in *Moxey v Westminster Pacific (NZ) Ltd*.[64] The amount outstanding was in the order of $44,000, numerous steps had been taken to obtain compliance, and the period of non-compliance since the Authority's order was some seven months.

[67] A $3,000 fine was imposed for "flagrant" non-compliance in *Coventry v Singh*.[65] The arrears involved totalled around $14,000 including costs. The period of non-compliance after the Authority's order was about seven months.

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59 At [3].
60 At [3].
61 At [6].
62 *Denyer v Les Griffen Ltd* EmpC Auckland AC43A/08, 14 November 2008.
63 *Broeks v Ross* EmpC Hamilton AC36A/09, 11 December 2009 at [8].
64 *Moxey v Westminster Pacific (NZ) Ltd* [2012] NZEmpC 16.
65 *Coventry v Singh*, above n 51, at [22].

[68] A much larger sum, over $186,000, was in issue in *ABCO1 Ltd v Dell*.[66] A fine of $10,000 was imposed for what was seen as "contumacious" non-compliance.[67]

[69] *Christiansen v Sevans Group (NZ) Ltd* involved a lengthy period of non-compliance (nearly two years).[68] The amount in issue was over $20,000. A "modest" fine of $2,500 was imposed where this was the first occasion of breach.[69] Leave was granted to have a sequestration application brought back before the court.[70]

[70] In *Lin v Zhou* attempts had been made to enforce the unpaid wages of $5,000 and penalty of $7,000 in the District Court.[71] A fine towards the upper end of the scale was seen as unrealistic.[72] A fine of $3,000 was imposed.

[71] Finally, in *Myatt v Pacific Appliances Ltd*, a fine of $15,000 was imposed.[73] The fine related to non-payment of a penalty of $1,500 for non-compliance with an improvement notice to remediate statutory minimum standards of employment. The period of non-compliance from the time of the Authority's order was 17 months. The Judge referred to the employer's "obstructive" behaviour.[74]

[72] As Judge Inglis noted, it is not easy to discern any particular pattern from these cases.[75] We turn now to discuss the considerations relevant to the measure of a fine for non-compliance where the underlying order is for payment of a monetary sum.

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66 *ABCO1 Ltd v Dell* [2012] NZEmpC 198.
67 At [13].
68 *Christiansen v Sevans Group (NZ) Ltd* [2013] NZEmpC 11. It appears the employer was in prison for some of that time.
69 At [12].
70 At [15].
71 *Lin v Zhou*, above n 51.
72 At [20].
73 *Myatt v Pacific Appliances Ltd* [2016] NZEmpC 24.
74 At [19].
75 Employment Court decision, above n 1, at [24].

Considerations relevant to the measure of a fine

[73] In the present case Judge Inglis identified the following considerations:[76]

- The level of culpability involved (including the nature, scope and duration of any default);
- The need for deterrence and denunciation (both in relation to the particular defendant but also more generally);
- Whether the defendant has committed similar previous breaches;
- The attitude of the defendant;
- Whether the defendant has taken any steps to address its non-compliance;
- The defendant's circumstances (including financial);
- The desirability of a degree of consistency in comparable cases.

[74] The Judge considered that a fine ought not to be disproportionate to the gravity of the default. However, the Judge also said that the imposition of a low-level fine based on the fact the sum involved was modest "may not adequately address other important considerations, such as deterrence and denunciation".[77]

[75] As we have indicated, we see the primary purpose of s 140(6) as being to secure compliance. That is apparent from the wording of the section. Secondly, it must be intended to enable the Court to impose some form of sanction for non-compliance with the compliance order.[78]

[76] Given these two purposes, a range of factors will be relevant in a particular case to the measure of the fine. Those factors will include the nature of the default (deliberate or wilful), whether it is repeated, without excuse or explanation and whether it is ongoing or otherwise.[79] Any steps taken to remedy the breach will be

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76 At [18].

77 At [19].

78 The Supreme Court in *Siemer v Solicitor-General* [2010] NZSC 54, [2010] 3 NZLR 767 at [26] discussed the purposes of punishment for contempt as a means of protecting the ability of the courts to uphold the rule of law.

79 In *Drake v Port Wellington Ltd*, above n 57, at 114 Chief Judge Goddard adopted the approach he had taken in *NZ Railways Corp v NZ Seamen's IUOW* [1989] 2 NZILR 738 (Labour Court) case and applied the "gradations of wrongdoing" identified by Sir John Donaldson in *Howitt Transport Ltd v Transport & General Workers' Union* [1973] ICR 1 (National Industrial

relevant together with the defendant's track record. Proportionality is another factor and will require some consideration of the sums outstanding. Finally, the respective circumstances of the employer and of the employee, including their financial circumstances, will be relevant.

[77] The wording of s 140(6) does not prevent a fine being imposed even where compliance has been achieved. The need to deter non-compliance, either by the party involved or more generally, is not to be overlooked. So, for example, some recognition may need to be given in setting the level of the fine in a case where the defendant has deliberately delayed payment over a long period until the last moment. Mr Hutcheson on behalf of the appellant expressed concern that the Judge had taken into account events prior to the making of the non-compliance order. We do not consider these matters were determinative in the Judge's decision as to the level of the fine in the present case. But, in any event, such material may form part of the relevant background, for example, in determining the nature of the default.

Application to the present case

[78] In our view there were three key considerations in this case. First, the fact that at the time of the hearing the appellant had paid the amount in full. While the Judge said she did not see much in the way of remorse, the fact that the amounts owing had been paid was important in that respect. Secondly, the amount owing was modest. We acknowledge it was a significant sum to Mr Costa but this was not a case where the employer had paid nothing at all. Rather it was, as we have indicated at [5] above, a case of short payment. Thirdly, the appellant's business was not in good shape financially. The Court first hearing the appeal allowed the appellant the opportunity of providing further evidence as to the financial affairs of the company so we have more information about that than was before Judge Inglis. That information also suggests this was more a case of muddlement. Given these circumstances, we are satisfied that the fine imposed was manifestly excessive.

[79] Another way of cross checking the result in this case is to compare the sanctions for contempt imposed in two more recent cases. In *Solicitor-General v*

Relations Court) ranging from "flat defiance" to "best endeavours" but a breach.

Miss Alice and in *Solicitor-General v Krieger*, fines of $5,000 were imposed in each case for deliberate and calculated breaches.[80] That serves to reinforce our view the fine of $5,500 imposed here was manifestly excessive.

[80] We accordingly need to consider whether a fine was appropriate and, if so, at what level. The initial order for holiday pay, interest and a filing fee was made on 3 October 2013 and was not paid, despite the intervening steps to enforce the order, until 4 September 2014. As Judge Inglis said, the appellant company has ultimately not proffered any adequate explanation for the delay. For that reason, we consider a fine is appropriate, but a modest one. We will substitute a fine of $750.

Result

[81] The appeal is allowed.

[82] The judgment of the Employment Court is set aside.

[83] The order for the appellant to pay a fine of $5,500 is set aside and a fine of $750 is substituted.

[84] The appellant seeks costs. The appellant has succeeded in part. In those circumstances, recovery of some costs is appropriate. The respondent must pay the appellant $1,500 for costs in this Court plus usual disbursements.

[85] Costs in the Employment Court are a matter for that Court to fix, failing agreement.

Solicitors:
The Small Law Firm Ltd, Auckland for Appellant
Crown Law Office, Wellington for Respondent

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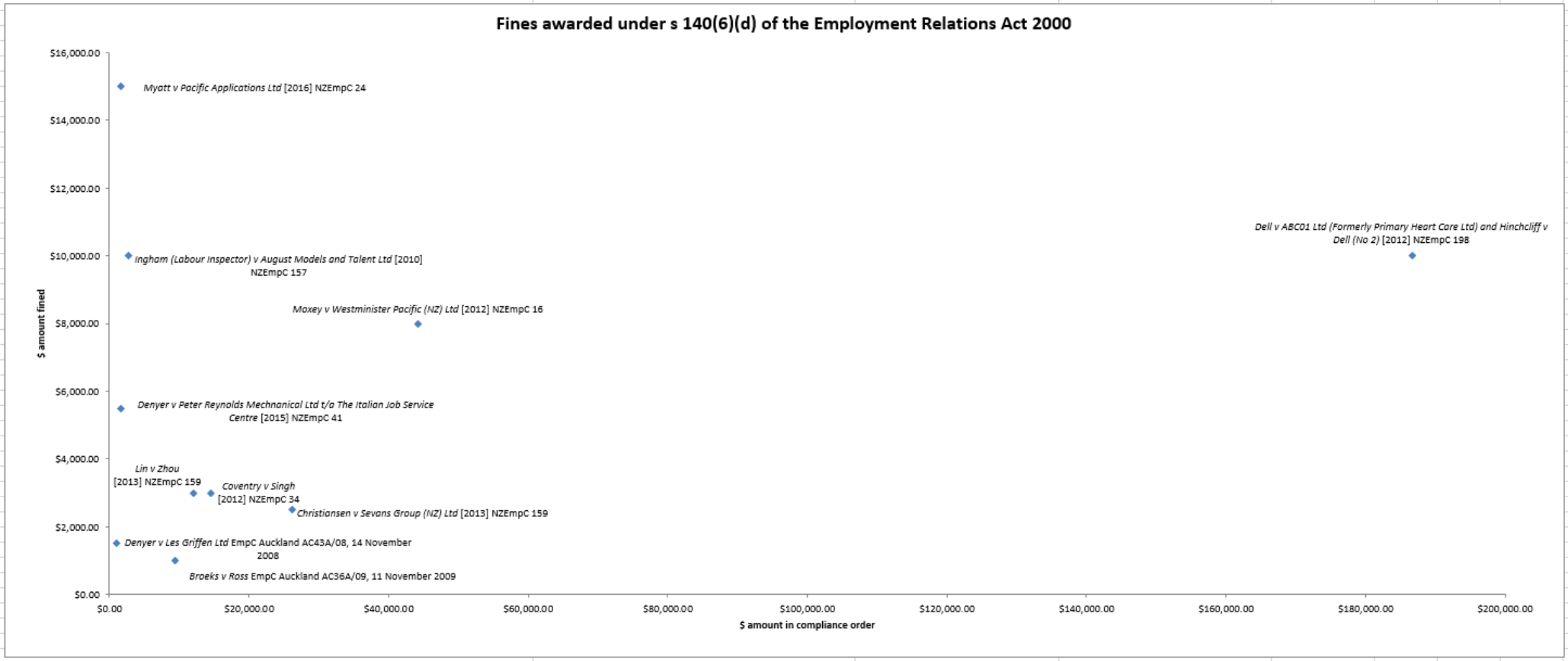
[80] *Solicitor-General v Miss Alice* [2007] 2 NZLR 783 (HC) and *Solicitor-General v Krieger* [2014] NZHC 172.

Appendix 1

Case	Quantum under compliance order	Outcome	Any other remarks	Level of culpability (including the nature, scope and duration of default)	Any similar previous breaches	Defendant's attitude	Any steps taken to address non-compliance	Defendant's circumstances (including financial)	Defendant's appearance
Finlayson v Kumar EmpC Auckland AC44/03, 3 July 2003.	$833.41 (holiday pay); $500 (penalty); interest	[9] Held the labour Inspector (LI) was entitled to an order for sequestration. Adjourned for LI to make arrangements. Court costs and any costs of sequestration also awarded.	[3] Court noted the defendant was perhaps fortunate the LI did not seek a fine ... Whilst in the past fines of around $1,000 in similar circumstances have been imposed, it is likely that such fines in appropriate cases will increase commensurate with the increased maximum provided by Parliament.	[6] Non-compliance despite written and face-to-face requests for payment. Nine months' non-compliance with Authority's order. Over one year since initial investigation.	(not discussed)	[4] Failed to attend mediation, appears not to have engaged at all in the process. No explanation for non-compliance.	[6] No steps taken.	[7] Married, drove a Holden vehicle under his trading name. His business appeared to have a number of arms and employed a number of staff in and around the Hamilton area. [Appeared to have the ability to pay].	None. Had also failed to appear at the mediation.
Denyer v Les Griffen Ltd EmpC Auckland AC43A/08, 14 November 2008.	$1,049 (holiday pay, pay for sick leave and alternative days worked)	$1,500 fine. Adjourned for one month for LI to arrange for order for sequestration. A total of $3,849 and any costs of sequestration.	[11] Court was inclined to agree with a fine of $5,000 however, as it was the first fine to be imposed under the new maximum of $40,000 Judge Travis chose not to fine at a level which might otherwise be appropriate in terms of the statute.	[1] Court had expressed the November date as the defendant's final opportunity. [Eight months' non-compliance with the Authority's order. Compliance order made 1 April 2008].	(not discussed)	[4] Judge Travis concluded the defendant had ample opportunity to state his case at the Authority and Court and failed to attend on more than one occasion	No steps taken.	(not discussed) [did not appear to be before the Court]	None. [4] Had also failed to appear on previous occasions.
Broeks v Peter Ross EmpC Auckland AC36A/09, 11 December 2009.	$2,832.47 (wages); $415.10 (holiday pay); $5,000 (compensation) interest, and disbursements. Total of $9,406.27.	$1,000 fine to be paid to the plaintiff.	[Personal Grievance matter][5] Court suggested enforcement to be pursued under s 141 as DC remedies wider than those of the Court.	Two months' non-compliance with a further compliance order made by the Court. [Total of four months' non-compliance with the Authority's order].	(not discussed)	[8] The Court considered the defendant had acted in flagrant disregard of the processes of the Authority and Court. Consistently failed to appear when required to do so.	No steps taken.	(not discussed) [did not appear to be before the Court]	None. Consistently failed to appear.
Ingham (Labour Inspector) v August Models and Talent Ltd [2010] NZEmpC 157.	$258 (wages); $2,250 (penalties); $140 (filing fees); interest	$10,000 fine and costs of $1,000 to the plaintiff. Adjourned for arrangement for sequestration orders.	[9] Parliament determined by setting a maximum of $40,000 and allowing it to be combined with a suite of other measures, that non-compliance is treated seriously.	Seven months' non-compliance with the Authority's order. Over 18 months since initial investigation.	[8] Court was not aware of any previous breaches, therefore treated as a first offender.	[3] Consistently failed or refused to appear.	[3] Sent a cheque for payment which, when presented, was dishonoured. Otherwise no steps taken.	[8] No suggestion it is unable to pay its debt by reason of impecuniosity.	None. Consistently failed or refused to appear.
Moxey v Westminister Pacific (NZ) Ltd [2012] NZEmpC 16.	$39,114.62 (wages, holiday pay, notice); $5,000 (hurt and humiliation)	$8,000 fine, half to plaintiff. Costs awarded.	[Personal Grievance matter]	Seven months' non-compliance with the Authority's order. [15] "ongoing and lengthy failure … to meet its legal obligations".	[12] Court was not aware of any previous breaches, therefore treated as a first offender.	[4] Did not attend the investigative meeting. Previously advised company was being removed from the register but remained listed at time of hearing. No explanations for non-compliance.	No responses to requests for payment.	[11] Limited material on financial position.	None.
Coventry v Singh [2012] NZEmpC 34.	$7,346.36 (wages, holiday pay, lost earnings); $3,000 (hurt and humiliation); $4,141.60 (costs); interest	$3,000 fine, half to plaintiff. Contribution to costs of $2,000 (against $5,000) awarded.	[Personal Grievance matter] [21] Financial pressure must be balanced "against his abject failure to take any steps whatsoever to address the issue of his legal obligations ... some weight to [the] submission that what [he] had done was prioritise where he wanted to spend his available money and [the plaintiff] had simply not been a priority."	Seven months' non-compliance with the Authority's order. [24] "ongoing and length failure to meet or attempt to meet his legal obligations … or to take any steps in that regard".	[17] Court not aware of any previous breaches, therefore treated as a first offender.	[5] Did not attend the investigative meeting where compliance order made. [19] Gave inconsistent explanations for non-payment. Stated he considered the defendant a contractor, alleged damage caused by plaintiff and the Court took from this evidence that he did not propose to meet his legal obligations.	No responses to requests for payment. [22] Although mentioned the possibility of a lump sum and instalment payments, no evidence any steps were taken.	[19] Constrained financial position although admitted he "has an ability to pay". [23] Court also accepted he suffered some health issues and stress but this does not provide an adequate explanation for failure.	Yes, represented after adjournment granted for legal advice.
ABC01 v Dell [2012] NZEmpC 198.	$186,738.22 (salary and disbursements)	$10,000 fine. Application for sequestration adjourned *sine die* due to complexity.	[Personal Grievance matter]	[Personal Grievance matter]	(not discussed)	(not discussed)	(not discussed)	[13] No information on company's financial position.	Yes, agent for the company appeared.
Christiansen v Sevans Group NZ (Ltd) [2013] NZEmpC 11.	$21,151.16 (wages, allowances, holiday pay); $5,000 (compensation); interest	Modest fine of $2,500 in the circumstances, half to plaintiff.	[Personal Grievance matter]	17 months' non-compliance with the Authority's order. 20 months' since investigative meeting.	[12] Court not aware of any previous breaches, therefore treated as a first offender.	[10] Director distracted by other events (criminal proceedings and imprisonment). Defendant accepted no steps had been taken to comply.	[5] No steps taken to comply.	[5] Director's evidence was the company had been struggling financially for some time, was not trading, did not have assets, and had funds of around $20.	Appearance for 1st and 2nd, none for 3rd defendant. No appearance at investigative meeting

Case	Quantum under compliance order	Outcome	Any other remarks	Level of culpability (including the nature, scope and duration of default)	Any similar previous breaches	Defendant's attitude	Any steps taken to address non-compliance	Defendant's circumstances (including financial)	Defendant's appearance
								[6] Director faced criminal proceedings at time of investigative meeting, and had been imprisoned, currently on parole and subject to a reparation order of $90,000, paid at a rate of $100 a week from his pension.	
Lin v Zhou [2013] NZEmpC 159.	$5,000 (wages); $3,000 (penalty) [A $4,000 penalty had also been imposed and was paid to the Crown]	$3,000 fine. Compliance order for payment of costs.	[17] Noted imprisonment is a sanction of last resort. Noted s 88 of the Summary Proceedings Act 1957 where a District Court Judge can order committal for non-payment of fines where a defendant has the means to pay (and a number of other factors satisfied).	Four months' non-compliance with the Authority's order.	[19] Did not appear the defendant had a history of failing to comply.	[16] Appeared on the basis of the material before it, that the defendant has simply ignored the Authority's orders and continued to do so. [20] Reason for non-compliance unclear.	[20] Ongoing failure to meet or attempt to meet legal obligations or take steps in that regard. [5] Plaintiff had unsuccessfully applied for attachment order in the District Court (due to defendant no longer receiving benefit).	[14] Statement of means (in respect of District Court enforcement) noted her sole income was a benefit however no longer in receipt. Unable to draw any conclusions on her present financial position.	None.
Myatt v Pacific Appliances Ltd [2016] NZEmpC 24.	$1,500 (penalty); $143.12 (disbursements)	$15,000 fine	[5] Failure to comply with improvement notice to remediate minimum standards of employment under four different Acts.	17 months' non-compliance with the Authority's order.	[21] Did not appear to be any previous breaches.	[19] Obstinacy of the defendant in the first instance and obstructive behaviour when required to remedy breaches and co-operate with court procedure.	No steps taken. [10] Obstructive behaviour adopted, including issuing a trespass notice on the LI.	[13] Not before the Court as the director did not appear and was unable to be served with the witness summons. [20] While the company had ceased trading there was no way of knowing its present financial circumstances.	None, no appearances throughout proceedings.

Appendix 2


Fines awarded under s 140(6)(d) of the Employment Relations Act 2000
$ amount fined
$ amount in compliance order
$16,000.00
$14,000.00
$12,000.00
$10,000.00
$8,000.00
$6,000.00
$4,000.00
$2,000.00
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$180,000.00
$200,000.00
Myatt v Pacific Applications Ltd [2016] NZEmpC 24
Ingham (Labour Inspector) v August Models and Talent Ltd [2010] NZEmpC 157
Moxey v Westminister Pacific (NZ) Ltd [2012] NZEmpC 16
Denyer v Peter Reynolds Mechnanical Ltd t/a The Italian Job Service Centre [2015] NZEmpC 41
Lin v Zhou [2013] NZEmpC 159
Coventry v Singh [2012] NZEmpC 34
Christiansen v Sevans Group (NZ) Ltd [2013] NZEmpC 159
Denyer v Les Griffen Ltd EmpC Auckland AC43A/08, 14 November 2008
Broeks v Ross EmpC Auckland AC36A/09, 11 November 2009
Dell v ABC01 Ltd (Formerly Primary Heart Care Ltd) and Hinchcliff v Dell (No 2) [2012] NZEmpC 198