

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2010] NZEMPC 44  
ARC 27/10**

IN THE MATTER OF     an application for a compliance order

BETWEEN                DEAN WILLIAMSON  
                                  Plaintiff

AND                        VICTORIA INSTITUTE (NZ) LIMITED  
                                  Defendant

Hearing:     20 April 2010  
               (Heard at Auckland)

Appearances: Plaintiff in Person  
                  Peter Meng, Agent for Defendant

Judgment:    20 April 2010

---

**ORAL JUDGMENT OF CHIEF JUDGE GL COLGAN**

---

[1]     Today's hearing is the successor to one between these parties on 30 March 2010 at the end of which I issued an oral judgment<sup>1</sup> making certain requirements of the defendant. Those requirements have been largely complied with. The payments required to be made to Mr Williamson were made yesterday.

[2]     There have been several developments in the meantime. Although the parties have attended mediation as directed by the Court, unfortunately this has not resolved the outstanding issues between them.

[3]     The Employment Relations Authority has clarified its decision on the hourly rate of pay for Mr Williamson as affects both the arrears payable to him and his ongoing pay with Victoria Institute. That sum is \$25 per hour. Although the

---

<sup>1</sup> [2010] NZEMPC 33.

defendant is dissatisfied with the Authority's determination, I think Mr Meng must acknowledge that this has been decided by the Authority and the defendant must comply with that.

[4] In my last judgment on 30 March 2010 I expressed some optimism that the involvement of Kathy Hughes as an advocate for the defendant appeared to assist in the resolution of these issues. Unfortunately Ms Hughes has not appeared today and Mr Meng has said that she is in Australia. Whether that is only temporarily or not I am unaware, but if Ms Hughes is to return and continue to give advice to the defendant, I encourage it to use her services.

[5] Mr Williamson has asked for the imposition of a penalty on the defendant which was foreshadowed in his statement of claim. If there is compliance by the defendant with the orders that I am about to make now, then I do not intend to impose a penalty. If, however, there is not compliance by the defendant, then it will be open to Mr Williamson to renew his claim for a penalty at the next hearing.

[6] Mr Williamson has also raised his concern about not being paid on those work days when he has attended court or mediation. This is a case which is essentially about compliance with obligations imposed by the Employment Relations Authority. I am not prepared to add to those by making any direction about payment for days on which Mr Williamson has been elsewhere than at the Institute for the purpose of this litigation.

[7] However, I do make the following orders which will have to be complied with by the defendant no later than 10 am on Monday 24 May 2010 when the matter will be back in front of the Court unless, of course, all matters have been resolved before then.

[8] The defendant is to pay the plaintiff by that date the balance of arrears of remuneration ordered by the Employment Relations Authority of \$7,300 gross. Clearly there will need to be tax deductions made from that sum and the defendant should ensure that Mr Williamson is advised of the amounts of any deductions for tax that are made by the defendant.

[9] The arrears of salary and current salary for Mr Williamson are to be based on the hourly rate of \$25 as confirmed by the Employment Relations Authority. If the employer has any concerns about its liability for holiday pay, it should take professional advice about that.

[10] I am also satisfied that Mr Williamson is entitled to, and the defendant will be required to pay to him by the same date, interest on the arrears of salary at the rate of 5 per cent per annum calculated from 15 February 2010 to the date or dates of payment to Mr Williamson.

[11] All of those matters will need to be complied with by the defendant no later than 10 am on Monday 24 May 2010 and if they are, that will be the end of this proceeding. The case will be called again at that time. If there are any further issues of non-compliance by the defendant, it should be clearly on notice that it may be liable to a penalty or penalties, together with the other remedies available where there is non-compliance with a compliance order of the Employment Relations Authority.

[12] Leave is reserved for either party to apply for any further orders or directions on notice if that is required.

GL Colgan  
Chief Judge

Judgment delivered orally at 10.33 am on Tuesday 20 April 2010