

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2010] NZEMPC 66
ARC 27/10**

IN THE MATTER OF an application for a compliance order

BETWEEN DEAN WILLIAMSON
 Plaintiff

AND VICTORIA INSTITUTE (NZ) LIMITED
 Defendant

Hearing: 24 May 2010
 (Heard at Auckland)

Appearances: Plaintiff in Person
 Peter Meng, Agent for Defendant

Judgment: 24 May 2010

ORAL JUDGMENT (NO 3) OF CHIEF JUDGE GL COLGAN

[1] There are three matters that the plaintiff says are still outstanding from the last time that the parties were in Court on 20 April 2010 when I made compliance orders which are set out in the judgment issued on that date.¹

[2] The first outstanding matter that Mr Williamson raises relates to the payment of arrears of wages to him. The amount paid is not disputed and Mr Meng says that the payment was based on Mr Williamson's figures without alteration. The payment was made by cheque last Friday 21 May 2010. However, the cheque has not yet been cleared. That is a matter that will resolve itself within the next few days and is not one that needs to concern this Court unless, of course, the cheque is not met. I

¹ [2010] NZEmpC 44.

do not propose to make any further order except to reserve leave to Mr Williamson to apply again if, for any reason, the cheque is not honoured.

[3] The second issue relates to the terms and conditions of Mr Williamson's employment agreement with Victoria Institute. In its determination of 5 February 2010,² and under the heading "**Reinstatement**", at paragraph 38 the Authority said this:

The Authority finds that reinstatement, the primary remedy, will not be impracticable and accordingly orders VINZ to immediately reinstate Mr Williamson to the position of ESOL/IELTS teacher, or English teacher. His terms and conditions are to be the same as those provided in the agreement he entered into in April 2009, except that his employment will not be for a fixed term but is permanent and is to be regarded as having been such since the commencement of that agreement.

[4] The Authority also clarified that Mr Williamson's hourly rate of pay was to be \$25.

[5] The terms and conditions of Mr Williamson's employment were not the subject of the compliance orders made by me on 20 April 2010. It seems to have been assumed at that time that the matter of the terms and conditions of employment could be resolved.

[6] The position in law is that Mr Williamson is engaged on the terms and conditions of employment as the Authority set those out at paragraph 38 of its determination and although the parties, or at least the defendant, wish to confirm those arrangements in a written document, the failure to do so to date does not affect them.

[7] If there are further difficulties with settling the terms and conditions in the written agreement, then I direct the parties to mediation or further mediation so that a mediator can assist them in resolving that issue. It should not be one that needs the Court's attention now.

² AA46/10.

[8] The final issue Mr Williamson has brought up is that of holiday pay although, again, this was not the subject of the compliance order that I made on 20 April 2010.

[9] At paragraph 41 of its determination of 5 February 2010, the Employment Relations Authority addressed holiday pay and said:

... the question of his annual holiday pay entitlements does not arise, because the anniversary of Mr Williamson's employment will not occur until April 2010. At that time he will be entitled to four weeks annual leave in accordance with the Holidays Act. His holiday pay then will be at the rate of his ordinary weekly pay at the commencement of the holiday, as provided by s 21 of the Act.

[10] The position is that Mr Williamson's anniversary has now passed. He says that he wants to take holidays in July and he wants to be paid his holiday pay now. The defendant says that whilst it is prepared to discuss these issues with Mr Williamson, its annual close down is over the Christmas period and wishes him to take his holidays at about that time. Mr Williamson says that if he has to wait for another seven months or so, he will have been denied his holiday entitlements which accrued in April 2010. This is another matter that was not the subject of the compliance order made by me and ought to be able to be resolved in a more pragmatic and down to earth manner. Questions of Holidays Act compliance and enforcement are ones for labour inspectors to deal with and I invite either or both of the parties to enlist the assistance of a labour inspector to resolve that issue that they have.

[11] In these circumstances I am satisfied that nothing else is required from the Court and I do not propose to make any further orders.

GL Colgan
Chief Judge

Judgment delivered orally at 10.44 am on Monday 24 May 2010