

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2022] NZEmpC 209
EMPC 151/2022**

IN THE MATTER OF an application for a compliance order

BETWEEN ALIESHA ANDERSON
 Plaintiff

AND NOA FARMS (2014) LIMITED
 Defendant

Hearing: On the papers

Appearances: SA McKenna and J Heinstman, counsel for plaintiff
 M Beech, counsel for defendant

Judgment: 24 November 2022

JUDGMENT OF JUDGE KATHRYN BECK

[1] The plaintiff, Ms Anderson, applies for a compliance order in respect of:

- (a) a determination of the Employment Relations Authority dated 10 August 2018 which partially accepted the plaintiff's claim and awarded her the sum of \$7,320;¹
- (b) a judgment of the Employment Court dated 17 September 2019 which upheld the remaining parts of the plaintiff's claim and awarded her a further six weeks' wages (to be reduced by 10 per cent for contribution);² and

¹ *A v N Ltd* [2018] NZERA Auckland 248 (Member Larmer).

² *A v N Ltd* [2019] NZEmpC 129.

(c) a costs judgment of the Employment Court dated 19 December 2019 which awarded the plaintiff the sum of \$10,000 (\$3,000 in the Authority and \$7,000 in the Court).³

[2] The plaintiff also seeks interest on the outstanding amounts and costs on this application.

[3] The defendant, Noa Farms (2014) Ltd, accepts that the judgment sums are payable but submits that the amount in [1](b) should be paid net of tax. It disputes the plaintiff's application for interest and costs.

[4] I consider each issue in turn.

[5] It was agreed that this matter be dealt with on the papers. The plaintiff filed submissions in support of her claim on 23 August 2022; the defendant filed its submissions on 9 September 2022. The plaintiff did not consider a response was required.

Quantum

[6] In a minute following a directions conference on 26 July 2022, I recorded that the parties agreed that the sum in [1](b) above should be paid net of Inland Revenue Department employer deductions.

[7] The defendant advised in its memorandum for the directions conference that six weeks' wages less PAYE and 10 per cent is \$4,825.95 but that further deductions may be necessary. This calculation was not challenged by the plaintiff at the directions conference or in her submissions. I note that the defendant's submissions do not suggest that there are further necessary deductions. Accordingly, I find that the defendant is liable to pay the sum of \$4,825.95 in respect of the Employment Court's judgment of 17 September 2019.

³ *A v N Ltd* [2019] NZEmpC 196.

[8] The issue that arose in respect of the quantum was unfortunate; to an extent, however, it was understandable. Judge Perkins, in his judgment dated 17 September 2019, ordered that the plaintiff be awarded “six weeks’ income, which is to be reduced by 10 per cent”.⁴

[9] In submissions dated 18 October 2019 relating to costs in the Court, counsel for the defendant informed the Court that “Six weeks wages less 10% contribution amounts to \$5,977.54”. The Court accepted and referred to that amount in its costs decision.⁵

[10] In the circumstances, therefore, the plaintiff cannot be criticised for seeking \$5,977.54. The fact that deductions then became a sticking point, as I say, was unfortunate.

Compliance order

[11] The Court only has jurisdiction to make compliance orders in respect of its own decisions.⁶ It cannot make a compliance order in respect of an Authority determination. As the Authority’s determination was not subject to a *de novo* challenge, the unchallenged aspects of that determination stand.⁷ This means that the Court does not have jurisdiction to make a compliance order in respect of the \$7,320 ordered by the Authority. Of course, this sum must still be paid and should have been paid already. If it is not paid, the plaintiff can apply to the Authority for a compliance order pursuant to s 137 of the Employment Relations Act 2000 (the Act).

[12] The Court may issue a compliance order when any person has failed to comply with any order or determination of the Court. In the present case, the defendant has failed to comply with the Court’s orders to pay \$4,825.95 (net of deductions) and \$10,000 costs.

⁴ *A v N Ltd*, above n 2, at [53].

⁵ *A v N Ltd*, above n 3, at [2].

⁶ Employment Relations Act 2000, s 139(1)(b).

⁷ *A v N Ltd*, above n 2, at [53].

[13] In defence, the defendant submits that there was uncertainty about the quantum of the sum owing and that the plaintiff failed to provide payment details.

[14] This does not adequately explain the circumstances of the non-payment.

[15] There was, and still is, nothing preventing the defendant from paying the undisputed sums. The failure to pay the undisputed amounts remains unexplained and is particularly inexplicable given the fact that at least part of the amount owing (\$17,320) has been deposited in the defendant's solicitor's trust account since 22 December 2021.

[16] The defendant received payment details from the plaintiff on 20 December 2019, which was the day after the Court's costs judgment. Any delay or subsequent confusion arising on the part of the defendant in respect of the plaintiff's payment details does not lie at the feet of the plaintiff.

[17] In light of these facts, I consider that a compliance order should be made in respect of the sums owing under the Court's substantive and costs decisions. The terms of this order are set out below at [26]. Section 139(3) states that I must specify a time within which the order is to be obeyed, and I find that the compliance order must be obeyed within seven days of this judgment being issued. If the defendant fails to comply, the plaintiff may bring an application for further orders under s 140(6) of the Act.

Interest

[18] The plaintiff also seeks interest on the unpaid sums. Under cl 14 of sch 3 to the Act, the Court may award interest in any proceedings for the recovery of money. This is to be calculated in accordance with sch 2 to the Interest on Money Claims Act 2016. Schedule 2 to that Act explains how the Civil Debt Interest Calculator applies to other legislation.

[19] The plaintiff submits that interest should accrue from the date of judgment of each decision of the Authority and Court until date of payment. However, the defendant submits that interest should only be awarded until December 2021 because

the plaintiff miscalculated the sum owing after that date. Alternatively, the defendant submits that interest on the Court's substantive decision should only accrue after the date of this decision because of the confusion about the quantum prior to that date.

[20] I consider that in the circumstances, interest should be applied for the whole period between the day after the date when payment became due under each judgment and the date of payment. For the Authority, the final day for payment was 7 September 2018. In his decisions, Judge Perkins did not specify when payments needed to be made, so payments fell due immediately.⁸ The sum of this interest can be calculated using the Civil Debt Interest Calculator in the terms set out below at [27].

Costs

[21] The plaintiff seeks actual costs of \$3,071.25. This is substantially lower than scale costs in light of the fact that the plaintiff is legally aided.

[22] The defendant submits that no costs should be payable due to what it says is the plaintiff's counsel's unreasonable approach to the deduction and failure to proactively pursue the payments that had been ordered by the Court.

[23] A submission that attempts to pin the entire delay for the payment, particularly of the undisputed amounts, on the plaintiff is not attractive. Further, it is untenable to attempt to hold counsel for the plaintiff responsible for not providing a means of payment when she had provided accurate details by way of email one day after the costs judgment. Mr Beech's submission that fault lay with counsel for the plaintiff, because she should have been aware that the defendant had overlooked her email and brought it to his attention earlier, was not persuasive.⁹

[24] Under the High Court Rules 2016, the Court may award indemnity costs where a party has ignored or disobeyed an order. In the present circumstances, the defendant has ignored or disobeyed the orders of the Authority and the Court to pay sums. While

⁸ *A v N Ltd*, above n 2; and *A v N Ltd*, above n 3.

⁹ The email had been sent to Mr Beech in the first instance.

there was some disagreement as to the exact quantum, the disputed amount was only a small part of the total sum. The undisputed amount could and should have been paid.

[25] In those circumstances and in light of the modest quantum involved, I consider that indemnity costs should follow.

Orders

[26] I am satisfied that a compliance order is appropriate. Therefore, I order the defendant to comply with the orders contained in Judge Perkins's judgments of 17 September 2019 and 19 December 2019. To comply, the defendant must pay the following sums (totalling \$14,825.95) to the plaintiff within seven days of this judgment:

- (a) \$4,825.95 in relation to the substantive judgment of 17 September 2019; and
- (b) \$10,000 in relation to the costs judgment of 19 December 2019.

[27] I am also satisfied that the defendant should pay interest on the sums owing before the Authority and the Court within seven days of the date of this judgment. Therefore, I order that the defendant pay interest as follows, calculated using the Civil Debt Interest Calculator:

- (a) Interest on \$7,320 between 8 September 2018 and the date of payment;
- (b) interest on \$4,825.95 between 18 September 2019 and the date of payment; and
- (c) interest on \$10,000 between 20 December 2019 and the date of payment.

[28] Further, I am satisfied that indemnity costs are appropriate in this case. Therefore, I order that the defendant pay the plaintiff \$3,071.25 in costs within seven days of this judgment.

[29] Finally, although I do not have jurisdiction to make a compliance order in respect of the sum of \$7,320 ordered by the Authority, I note that this sum remains outstanding and ought to be paid immediately.

Kathryn Beck
Judge

Judgment signed at 4.20 pm on 24 November 2022