

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2010] NZEMPC 33
ARC 27/10**

IN THE MATTER OF an application for a compliance order

BETWEEN DEAN WILLIAMSON
 Plaintiff

AND VICTORIA INSTITUTE (NZ) LIMITED
 Defendant

Hearing: 30 March 2010
 (Heard at Auckland)

Appearances: Plaintiff in Person
 Kathy Hughes, Advocate for Defendant

Judgment: 30 March 2010

ORAL JUDGMENT OF CHIEF JUDGE GL COLGAN

[1] The question for decision today is whether Victoria Institute (NZ) Limited (VINZ) should be required, by compliance order made by this Court, to comply with the Employment Relations Authority's compliance order made on 12 February 2010 and confirmed in a written determination dated 15 February 2010.¹

[2] The Authority's compliance order, made under s 137 of the Employment Relations Act 2000 (the Act), required VINZ to:

- reinstate Dean Williamson to the position of English teacher at the VINZ language school by 9 am on Monday 15 February 2010;

¹ AA 66/10.

- reinstate Mr Williamson on the terms and conditions of employment as the Authority had determined at paragraphs [37]-[39] of its determination of 5 February 2010;
- reimburse wages lost by Mr Williamson as set out at paragraph [40] of the determination of 5 February 2010, and pay the compensation set out at paragraph [43] and costs as at paragraph [45] of that earlier determination by no later than 9 am on Monday 22 February 2010;
- pay Mr Williamson, for his work for the week commencing 8 March [sic] 2010, \$500 before tax being the amount he would have earned if VINZ had reinstated him as earlier ordered by the Authority, VINZ having been ordered to pay interest on that sum at the rate of 5 percent per annum calculated from 15 February 2010;
- pay Mr Williamson the further sum of \$70 as reimbursement of the Authority's filing fee.

[3] In proceedings filed by Mr Williamson in this Court on 15 March 2010, he complained that VINZ had not complied with the Authority's compliance orders. I note that at both hearings in the Authority, a representative of VINZ (although not its present representative) had been present when the Authority made the orders it did.

[4] VINZ has apparently accepted my strong recommendation on 16 March that it take professional advice about its situation and obligations in law. It is now represented by an advocate and I regard that and the submissions made to me today by the advocate, as VINZ taking a more responsible attitude to the difficulties it is in as a result of these proceedings.

[5] Although VINZ initially challenged the Authority's determination, that challenge was discontinued so that the company cannot now be heard to complain about justification for the Authority's determination or that there is any question that it is obliged to comply with the Authority's directions.

[6] Mr Williamson has now been reinstated in his teaching role and the difficulties with regard to compliance are broadly two.

[7] First, there is a dispute about the rate of pay. Mr Williamson says that the Authority directed that he be paid \$25 per hour. The defendant says there is a difficulty of interpretation of the Authority's direction and that the \$25 per hour included a pay as you go holiday pay arrangement of \$2 per hour so that it would be inequitable for Mr Williamson to now be paid \$25 per hour and have holiday pay added to that sum. The Authority's determinations do not make that question entirely clear.

[8] The second area of difficulty with compliance is the requirement to pay the arrears of wages and reimbursement of disbursements. The defendant says that its economic circumstances are such that it simply cannot do what the Authority has directed and has made various offers to Mr Williamson, to which he has not agreed, for payment in instalments which would see those sums repaid over the next 18 months or so.

[9] There is an associated disagreement between the parties in that the defendant wishes to re-negotiate some of the terms and conditions of Mr Williamson's individual employment agreement but which he has resisted. The company now acknowledges that it cannot re-negotiate terms and conditions of employment without Mr Williamson's agreement.

[10] As I have already said, the involvement of Ms Hughes and her company to give advice and advocacy services to the defendant is a positive move.

[11] There is, not surprisingly, a degree of antagonism in the workplace because of these outstanding issues. I am required by the statute,² and think that in this case it is particularly appropriate, to direct the parties to further mediation and I do so with a request that the mediation be undertaken urgently. The issues for mediation will be all of the outstanding issues between the parties to the extent that these may

² S 188 Employment Relations Act 2000.

be negotiable so that Mr Williamson's employment with VINZ can be put on a proper footing for the benefit of both parties and for the students of the school.

[12] There must, however, be some progress with regard to the defendant's obligations under the Authority determinations and the matter should therefore come back for a further hearing in this Court unless everything is able to be resolved in mediation.

[13] I ask the Authority to clarify its intention about the hourly rate of pay for Mr Williamson upon his reinstatement so that the defendant can be clear what amount it must pay him. To this end a copy of this judgment should be sent to the Authority Member concerned.

[14] The second matter is that although, on present indications, I accept that the defendant is in testing economic circumstances, I am not satisfied that it is simply and completely unable to pay any lump sum amount to Mr Williamson to discharge its obligations as directed by the Authority.

[15] I am therefore going to make a partial compliance order with regard to those arrears that the company is going to have to address in conjunction with its accountants and advisers. That compliance order must be complied with by the time the case next comes back to court which will be on Tuesday 20 April 2010 at 10 am. By that date, the defendant must pay to Mr Williamson the sum of \$5,000 towards the payments ordered by the Authority. Of that sum of \$5,000, \$4,000 is the Authority's award under s123(1)(c)(i) of the Employment Relations Act 2000, and the balance is to be treated as arrears of wages and salary.

[16] The company should be very clear that it is required to do so. That is not a negotiable obligation. It is not the full amount that the Authority has directed Mr Williamson to be paid but its payment will be at least a sign of good faith on the part of the company that it is prepared to meet its obligations as its advocate has now assured the Court.

[17] The mediation I have directed should of course take place before that next hearing date and the Registrar of this Court will communicate with the appropriate person in the Mediation Service to try to arrange an urgent mediation during that period.

[18] I am hopeful that with the professional and independent representation that the defendant now has, these matters can be resolved between the parties at mediation. But if they cannot, then further orders may be made by this Court when the matter comes back on 20 April.

[19] I note also, and regard as responsible, the defendant's concession that it should meet Mr Williamson's \$300 filing fee for bringing this proceeding to the court and would expect that payment too be made before the matter comes back for a further hearing on 20 April.

GL Colgan
Chief Judge

Judgment delivered orally at 10.52 am on Tuesday 30 March 2010