

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

**[2020] NZEmpC 211
EMPC 172/2020**

IN THE MATTER OF	enforcement of a compliance order under ss 138(6) and 140(6) of the Employment Relations Act 2000
BETWEEN	YERIM KIM Plaintiff
AND	CATHARINA LION Defendant

Hearing: 30 November 2020
(Heard at Wellington)

Appearances: S Kang, counsel for plaintiff
C Lion, in person

Judgment: 1 December 2020

JUDGMENT OF JUDGE B A CORKILL

Introduction

[1] Ms Yerim Kim has applied for sanctions against her former employer, Ms Catharina Lion.

[2] It is asserted that compliance and other orders made in a determination of the Employment Relations Authority on 28 April 2020 have not been satisfied.¹

¹ *Kim v Lion* [2020] NZERA 169 (Member Ryan).

[3] The matter has a long history flowing from various payments which it was originally agreed Ms Lion would pay to Ms Kim in a record of settlement dated 17 October 2018.

[4] Some, but not all, of the agreed payments were made, and a second settlement agreement was entered into on 10 June 2019, which included updated arrangements for payment.

[5] Defaults continued, so that compliance orders were sought from the Authority. These were:

- a) Ms Lion was ordered to comply with the second settlement agreement of 10 June 2019 and pay Ms Kim \$3,500 within 30 days.
- b) She was also to pay a penalty of \$600 for breach of the settlement agreement, to be paid six weeks after the issuing of the determination.
- c) She was to contribute \$750 towards Ms Kim's costs, that sum to be paid within six weeks.

[6] Because these amounts were not paid by their due dates, the sanctions proceeding was issued on 17 June 2020.

[7] After the pleadings were closed, a telephone directions conference was held; both parties were represented by counsel. In order to mitigate ongoing costs, it was agreed that either party could file affidavit evidence, that there would be a submissions-only hearing with written submissions being filed in advance, and that counsel could speak to those submissions via Audio Visual Link (AVL) from remote locations.

[8] Comprehensive submissions were filed. For Ms Kim it was submitted that in all the circumstances a fine of \$5,000 should be imposed under s 140(6) of the Employment Relations Act 2000; or \$4,000 if the compliance order was complied with prior to the hearing; 75 per cent of that sum should be paid to Ms Kim. It was also submitted that the proceeding be adjourned to monitor compliance.

[9] For Ms Lion it was submitted that in all the circumstances, particularly those of financial hardship, no fine should be imposed at all.

[10] Ms Lion filed an affidavit in support of her position. She said she was in serious financial difficulties with her business. She operates a clothing retail business in Lower Hutt, and her two main sources of income are from that business, and from superannuation. The evidence is she is aged 73. She confirmed that by the time of the affidavit she had made several payments.

[11] Shortly before the hearing, the Court was advised that Ms Lion's lawyer was no longer acting for her, and that she would attend the Court in person. At the hearing, she was assisted by a Korean interpreter. Mr Kang, counsel for the plaintiff, attended via AVL.

The hearing

[12] At the hearing, evidence and submissions focused on a feasible solution to the difficulties which have arisen. They also focused on the possibility of outstanding liabilities being discharged over the period of an adjournment of the proceeding.

[13] Ms Lion gave oral evidence at the hearing. From the totality of her evidence I am satisfied that:

- a) Ms Lion has suffered genuine financial stress. Her business operation has been significantly affected by issues arising from the COVID-19 lockdown, and a personal injury she suffered in the middle of this year.
- b) She has made a responsible attempt to discharge the outstanding liability, albeit at a late stage. She paid \$3,800 between July and November 2020.
- c) There is a balance owed in respect of the amounts ordered for payment by the Authority of \$1,050.
- d) Ms Lion would, if given the opportunity, continue to make payments at the rate of \$200 per week to Ms Kim if possible. Previously she had

made regular payments at \$100 per week; she has also made other, more substantial, payments.

[14] In effect she sought time to meet her liabilities; through counsel, Ms Kim agreed to provide this on the basis the outstanding liabilities would be met with an agreed timeframe.

[15] In the particular circumstances, I have concluded it is appropriate for Ms Lion to be given that opportunity by adjourning the current proceeding on terms; and that she pay Ms Kim's costs to date, since it was reasonable for Ms Kim to bring this proceeding.

[16] After hearing Mr Kang on the subject of costs, he accepted that a fair and reasonable contribution to his client's costs to date would be \$1,650.

Result

[17] Accordingly, I adjourn the proceeding to 19 April 2021.

[18] Ms Lion is to pay the total sum of \$2,700, at \$200 per week if at all possible.

[19] I defer the issue of imposition of any penalty. If, prior to 19 April 2021, payments are not made as above, I reserve leave to Ms Kim to file a memorandum to that effect on seven days' notice; if such a problem arises, I will timetable next steps.

[20] If the sum of \$2,700 has been paid by 19 April 2021, Mr Kang is to file a memorandum indicating whether his client still seeks a penalty. If so, I will deal with that issue on the papers, in light of the comprehensive submissions I have been given on that topic already for each party, unless it is necessary to receive further submissions.

B A Corkill
Judge

Judgment signed at 3.00 pm on 1 December 2020