

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

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2022] NZEmpC 73
EMPC 353/2021**

IN THE MATTER OF an application for a compliance order

BETWEEN DARREN VINCENT OLIVER
 Applicant

AND STUART DALE BIGGS
 Respondent

Hearing: (on the papers)

Appearances: S Zindel, counsel for the applicant
 No representation for the respondent

Judgment: 3 May 2022

JUDGMENT OF JUDGE B A CORKILL

[1] In my judgment of 8 July 2021, I ordered Mr Stuart Biggs to pay a contribution to Mr Darren Oliver’s costs of \$7,200.¹

[2] On 12 October 2021, a further proceeding was filed by Mr Oliver pleading that the amount so awarded had not been paid by Mr Biggs. He sought a compliance order, and an order for solicitor/client costs.

[3] The proceeding was served on Mr Biggs on 30 January 2022. No statement of defence was filed by Mr Biggs.

[4] A telephone directions conference proceeded on notice to both parties on 23 March 2022. There was no appearance from Mr Biggs. I directed that Mr Oliver

¹ *Oliver v Biggs* [2021] NZEmpC 104 at [37].

should file affidavit evidence in support of his claim, and submissions, and that the claim would then be dealt with on the papers.

[5] I have received Mr Oliver's affidavit, which outlines multiple attempts via his lawyer to obtain payment of the outstanding sum of \$7,200 in the latter half of 2021, both from a lawyer who had acted for Mr Biggs previously, and directly.

[6] No response was received from Mr Biggs. This resulted, Mr Oliver said, in this proceeding being filed. He also outlined the costs thereby incurred.

[7] Mr Zindel's supporting submissions confirmed what had occurred, and that a costs arrangement had been entered into with regard to the compliance proceedings with Mr Oliver.

[8] There is no doubt that a compliance order should be made since Mr Biggs has failed to pay the sum he was ordered to pay.

[9] As regards costs in connection with this proceeding, I note that had these been fixed under the Court's Practice Directions using Band B, Category 2 of the Guideline Scale, the entitlement would be in the order of \$13,860 (Items 4, 11, 12, 50 and 53 of the scale, at \$2,390 per day), albeit for a defended claim.²

[10] This sum is understandably well in excess of Mr Oliver's actual costs. He now seeks \$3,600 for costs and disbursements, which I consider to be fair and reasonable in the circumstances.

[11] Accordingly, I make the following orders:

- (a) A compliance order that Mr Biggs comply with the costs order I made on 8 July 2021, that he pays Mr Oliver \$7,200. This order is to be complied with within 28 days.

² "Employment Court of New Zealand Practice Directions" <www.employment.govt.nz> at No 16.

- (b) That Mr Biggs pay Mr Oliver costs of \$3,600, with regard to the present proceeding. Under s 139(1) of the Employment Relations Act 2000 (the Act), it is not possible at this stage to make a compliance order in respect of this sum. However, if it is not paid promptly, an application for a compliance order may be advanced.

[12] I also note that if there is a failure to satisfy the compliance order, an application for sanctions under s 140 of the Act may be made, which includes the possibility of a fine being imposed.

[13] Mr Biggs should satisfy his obligations as quickly as possible, in order to bring this matter to an end, and to avoid potential further liabilities being incurred.

B A Corkill
Judge

Judgment signed at 3.45 pm on 3 May 2022