

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

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

**[2025] NZEmpC 158
EMPC 6/2024**

IN THE MATTER OF an application for a compliance order

BETWEEN GARY-LEIGH GEORGE COTTON
 Plaintiff

AND DARCEE PATRICK GOSLING
 Defendant

Hearing: 28 July 2025
 (Heard at Christchurch via Audio Visual Link)

Appearances: L Anderson, advocate for plaintiff
 No appearance for defendant

Judgment: 28 July 2025

ORAL JUDGMENT OF JUDGE K G SMITH

[1] Gary-Leigh George Cotton seeks orders against Darcee Patrick Gosling under s 140(6) of the Employment Relations Act 2000 (the Act).

[2] Mr Cotton is seeking to have sanctions imposed on Mr Gosling because he has not satisfied a compliance order made by the Employment Relations Authority under s 137 of the Act on 11 May 2023.¹

[3] The Authority made a compliance order following two earlier determinations. On 16 March 2022, the Authority determined that Mr Cotton was employed by Mr Gosling and had been both unjustifiably disadvantaged and dismissed.²

¹ *Cotton v Gosling* [2023] NZERA 238.

² *Cotton v Gosling* [2022] NZERA 90.

[4] The Authority was satisfied that remedies should be awarded to Mr Cotton. Mr Gosling was ordered to pay him:

- (a) \$10,010 gross for lost wages;
- (b) \$830.45 for arrears of wages;
- (c) \$131.12 gross for unpaid holiday pay; and
- (d) \$8,000 compensation without deduction under s 123(1)(c)(i) of the Act.

[5] Subsequently, on 12 April 2022, the Authority ordered Mr Gosling to pay to Mr Cotton costs of \$2,250 and to reimburse him for the filing fee of \$71.56.³

[6] None of the amounts the Authority ordered Mr Gosling to pay were paid.

[7] On 11 May 2023, the Authority considered an application by Mr Cotton for a compliance order under s 137(1)(b) of the Act. It was satisfied that an order was appropriate. Mr Gosling was ordered to comply with the orders made in the Authority's two earlier determinations within 28 days of the date of the compliance order determination.

[8] Additionally, Mr Gosling was ordered to pay interest totalling \$690.81. He was further ordered to pay costs for the compliance order application of \$750 and to reimburse the filing fee for that application of a further \$71.56.

[9] The compliance order did not attach to the interest and costs component of the May 2023 determination.

[10] The compliance order has not been satisfied and that has resulted in this application for sanctions.

³ *Cotton v Gosling* [2022] NZERA 139.

[11] Mr Gosling has not participated at any stage in response to this claim. In fact, Mr Cotton had to go to the extent of obtaining an order for substituted service to be able to proceed today. For completeness, I should add that even though Mr Gosling did not take steps, when Court began this morning he was paged throughout the Court building and a search was made of the Courtroom foyer to ascertain if he might, at this late stage, still be intending to enter an appearance. He did not appear. I am satisfied that the methods of substituted service directed to be undertaken were carried out and that Mr Gosling is aware of today's proceeding.⁴

[12] This morning I heard from Mr Cotton who confirmed that, despite the passage of time and the existence of the compliance order, he has not received any payment from Mr Gosling. Nor has he entered into any compromise with Mr Gosling that would see the debts created by the determinations resolved in some other way.

[13] A party adversely affected by a failure or refusal to comply with an Authority's compliance order may apply to the Court under s 140(6) of the Act for a sanction to be imposed. That section reads:

Where any person fails to comply with a compliance order made under section 139, or where the court, on an application under section 138(6), is satisfied that any person has failed to comply with a compliance order made under section 137, the court may do 1 or more of the following things:

- (a) if the person in default is a plaintiff, order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceedings:
- (b) if the person in default is a defendant, order that the defendant's defence be struck out and that judgment be sealed accordingly:
- (c) order that the person in default be sentenced to imprisonment for a term not exceeding 3 months:
- (d) order that the person in default be fined a sum not exceeding \$40,000:
- (e) order that the property of the person in default be sequestered.

[14] Mr Cotton's statement of claim sought a fine, imprisonment and an order for sequestration relating to a motor vehicle, plus interest on the money outstanding in accordance with the Interest on Money Claims Act 2016. Costs were also sought.

⁴ *Cotton v Gosling* [2025] NZEmpC 35.

[15] This morning Mr Anderson confirmed that imprisonment and sequestration are no longer pursued and he confined submissions to supporting a fine being imposed. I note that since this is an application for sanctions it would not be appropriate for me to consider applying the Interest on Money Claims Act but, in any event, that Act still applies in relation to the sums the Authority ordered to be paid.

[16] In *Peter Reynolds Mechanical Ltd t/a The Italian Job Service Centre v Denyer (Labour Inspector)*, the Court of Appeal held that the purpose of the available sanctions under s 140(6) is to compel compliance with the Authority's orders and to impose a sanction for not complying with them.⁵

[17] The Court of Appeal referred to a non-exhaustive range of factors to consider in assessing those sanctions and, in particular, a fine. They include the nature of the default (that is whether it is deliberate or wilful), whether it is repeated, without excuse or explanation and if it is ongoing. The factors also include any remedial steps by the defendant, the defendant's track record, the circumstances of the parties, the appropriateness of a deterrent penalty and the proportionality of any proposed fine.

Should a sanction be imposed?

[18] The first consideration is whether the circumstances of this case justify a sanction at all. Breaching a compliance order is serious and, in my view, warrants a serious response.⁶

[19] As I have already indicated, in the first instance the appropriate sanction is a fine. The other sanctions referred to earlier, are last resort options.

The fine

[20] The maximum fine is \$40,000. Mr Anderson submitted that a substantial fine should be imposed because the Authority's orders were made some time ago, they

⁵ *Peter Reynolds Mechanical Ltd t/a The Italian Job Service Centre v Denyer (Labour Inspector)* [2016] NZCA 464, [2016] ERNZ 828.

⁶ See for example the discussion in *McMillan v Resque Corp* [2023] NZEmpC 76, [2023] ERNZ 308; and *Cousens v Star Nelson Holdings Ltd* [2022] NZEmpC 30.

have not been satisfied, no arrangement to satisfy them has been made, and Mr Gosling's actions should be viewed as contemptuous.

[21] In *Peter Reynolds*, the Court of Appeal imposed a \$750 fine at the same time as it listed the factors that should be considered when evaluating a possible sanction. Importantly, in that case the employer had remedied the breach before the sanction was imposed which, along with the employer's difficult financial situation, were significant factors in awarding what is otherwise a modest fine.

[22] Since then there have been several cases reviewing the level of fines. In *Cooper v Phoenix Publishing Ltd*, I reviewed cases up to that point in time (which was in 2020) and concluded that where an employer is in breach, had taken no steps to remedy that breach and there were no issues about capacity to pay or previous breaches, the starting point for an assessment of the level of the fine is approximately \$10,000.⁷ There are cases that have used a lower starting point but most of them appear to be in circumstances where remedial steps were taken or perhaps where the financial circumstances of the employer justified a lower starting point.

[23] What is an appropriate starting point in this case? I consider that starting point should be \$10,000. No steps have been taken since the Authority's first determination in March 2022, over three years ago. Nor were any taken after the compliance order was made over two years ago in May 2023.

[24] I note that in the Authority's determination imposing the compliance order it recorded Mr Gosling being directed to provide evidence of his financial situation following his participation in a case management conference prior to the orders in the Authority being made. The Authority was interested in the information to understand why the previous orders remained unsatisfied and, potentially at least, to contemplate whether payment over time should be ordered. He did not provide the information.

[25] The situation has not improved. Mr Gosling has been completely silent about complying with the orders, even to the point where extensive efforts were needed to

⁷ *Cooper v Phoenix Publishing Ltd* [2020] NZEmpC 111, [2020] ERNZ 332.

serve this proceeding on him and he has also taken steps to avoid processes in the District Court to enforce the Authority's determinations.

[26] Turning to the factors considered in *Peter Reynolds*:

- (a) Mr Anderson and Mr Cotton were unable to shed any light on why the amounts due and owing were not paid. Mr Gosling knows that determinations were made requiring him to pay. He also knows that the compliance order was made and he was served with the claim considered today. I accept, therefore, that the breach of the compliance order is deliberate and wilful and the culpability level is to measured accordingly.
- (b) The failure to comply is ongoing.
- (c) The next factor is Mr Gosling's track record, if any. There is no information available to suggest that he has previously failed to comply with orders made by the Authority.
- (d) There has been no remediation.
- (e) As to Mr Gosling's financial circumstances, nothing is known. I infer that he is probably in a position to pay the amounts owed.
- (f) As to Mr Cotton's circumstances, enough is addressed by simply saying that he is entitled to pay and holiday pay amongst the other awards that were made.
- (g) Deterrence. In the circumstances just outlined, I am satisfied that it is appropriate to impose a sanction on Mr Gosling both to deter him from further breaches of Authority orders, but also to act as a general deterrent to make clear that Authority orders must be obeyed.

[27] Having assessed a starting point of \$10,000, the factors just described tend to reinforce that amount as the appropriate fine level. However, I need to consider

whether a fine of that amount is proportionate to the breach and, if that is not the case, to potentially make adjustments.

[28] The absence of information from or about Mr Gosling hampers this assessment slightly. The amounts involved are significant for Mr Cotton. He has not had the benefit of the Authority's original determination for over three years and the compliance order has been disobeyed for over two years. The level of the fine at \$10,000 is a quarter of the maximum. Stepping back and looking at the circumstances overall, bearing in mind that the amounts ordered are reasonably substantial and the nature of them involves pay and holiday pay, I am satisfied that the fine level is proportionate.

[29] Section 140(7) of the Act empowers the Court to direct some or all of the fine to be payable to Mr Cotton. Even though I intend to make an award of costs, and that may go some way to alleviating the expense Mr Cotton has incurred or will incur, I still take into account the fact that he has been required to bear the burden of making this application, and the consequent distress and inconvenience of having to do so. I am satisfied that it is appropriate to order a portion of the fine to be payable to him. I fix that amount at \$4,000.

Costs

[30] This morning Mr Anderson filed in Court his submissions on costs. Rather than delay considering costs I will deal with them now. Using the Court's Guideline Scale on a 1A basis he has sought a total of \$5,088.⁸ Additionally, he has sought reimbursement of \$800.98 which was the cost of public notices used to effect substituted service. I am satisfied that each of the steps referred to by Mr Anderson in his submissions were taken, that they were necessary, and that it is appropriate to calculate them on a 1A basis.

⁸ Employment Court of New Zealand Practice Directions" (1 September 2024) <www.employmentcourt.govt.nz> at No 18.

Outcome

[31] Darcee Patrick Gosling is ordered to pay a fine of \$10,000 and of that sum \$4,000 is payable to Gary-Leigh George Cotton. He is further ordered to pay costs of \$5,088 with disbursements of \$800.98.

K G Smith
Judge

Judgment delivered orally at 9.46 am on 28 July 2025