

the Court should be satisfied that the person has failed to comply with a compliance order under s 137.²

[3] Ms Saphoo and Mr Yingkamhang seek the imposition of a fine, payment to them of part of the fine, and reimbursement of costs and disbursements.

The issues

[4] The Court needs to decide the following issues:

- (a) Has Mr Yunan failed to comply with a compliance order made by the Authority?
- (b) Should a fine be imposed, and if so, in what amount?
- (c) Should part of the fine be paid to Ms Saphoo and Mr Yingkamhang?
- (d) Should an award be made for costs and disbursements and, if so, in what amount?

Has Mr Yunan failed to comply with compliance orders made by the Authority under s 137 of the Act?

[5] The Authority, in a determination dated 29 August 2024, ordered compliance with a record of settlement entered into by Ms Saphoo and Mr Yingkamhang with their employer Mr Yunan. The record of settlement was certified by a mediator in accordance with s 149 of the Act.

[6] In its determination the Authority ordered that Mr Yunan pay \$1,337.54 to Ms Saphoo which was the full amount owing to her in the settlement agreement.

[7] Mr Yunan was ordered to pay \$1,054.55 to Mr Yingkamhang being the outstanding portion of the \$2,254.55 owing under the settlement agreement.

² Where an application has been made under s 138(6) of the Act.

[8] The Authority ordered compliance with payment of these amounts by 11 September 2024.

[9] The Authority also awarded a penalty of \$2,500. \$1,500 of the penalty was payable to Ms Saphoo, and \$1,000 was payable to Mr Yingkamhang. Reimbursement of the filing fee of \$71.55 was also ordered.

[10] Whilst all amounts were required to be paid by 11 September 2024, the only amounts for which compliance was ordered were those owing under the settlement agreement of \$1,337.54 and \$1,054.55. Those amounts are the focus for this proceeding.

[11] The determination was not challenged.

[12] The Court is satisfied from an affidavit of service that Mr Yunan was served with the proceedings. The server confirmed Mr Yunan's identity because Mr Yunan had previously worked for him.

[13] Mr Yunan was served by post with the notice of hearing and minute of the Court. He was called outside the Courtroom on the day of the hearing, but there was no appearance registered, and the matter proceeded in Mr Yunan's absence.

[14] The Court heard evidence from Ms Saphoo and Mr Yingkamhang. They confirmed that there had not been any payment made to them in accordance with the compliance orders. They confirmed that the amounts for which compliance was ordered by the Authority were still outstanding.

[15] The Court is satisfied that Mr Yunan has failed to comply with compliance orders made by the Authority under s 137(1)(a)(iii) of the Act.

Should a fine be imposed and, if so, what amount?

[16] A breach of a compliance order is a serious matter. Mr Yunan has not provided any explanation or excuse as to why payment has not been made in accordance with the orders made by the Authority.

[17] The Court of Appeal in *Peter Reynolds Mechanical Ltd v Denyer* identified the primary purpose of s 140(6) is to secure compliance. Further, it found that the section must be intended to enable the Court to impose some form of sanction for non-compliance with the compliance order.³ The need to deter non-compliance by the party involved or more generally is a consideration.

[18] A range of non-exhaustive factors was indicated by the Court of Appeal in *Reynolds* for assessing whether a fine should be imposed and the amount of a fine. This includes the circumstances of any default (intentional or otherwise) whether steps have been taken to address non-compliance, and the need for deterrence. A factor to consider is whether the breach is a first or repeated breach by the defendant. The respective circumstances of the employer and employee are relevant, including financial considerations. Consideration of other similar cases for consistency and proportionality is required.⁴

Was the default deliberate or wilful?

[19] Mr Yunan has been served but has not taken any steps in this proceeding. The Court concludes in these circumstances that the failure to make payments in breach of the compliance orders is deliberate and intentional.

Is the default ongoing?

[20] The default is ongoing and has not been remedied since the orders for compliance were made. The period of time that has elapsed from when compliance was ordered by the Authority is about 11 months.

First, or repeated breach?

[21] There is no evidence that Mr Yunan has previously breached orders of the Court or Authority. The Court treats this as a first breach on his part.

³ *Peter Reynolds Mechanical Ltd v Denyer* [2016] NZCA 464, [2017] 2 NZLR 451, [2016] ERNZ 828 at [77].

⁴ At [76].

Circumstances of Ms Saphoo and Mr Yingkamhang

[22] Ms Saphoo and Mr Yingkamhang immigrated to New Zealand and have limited English. They have waited a considerable time for money that Mr Yunan agreed to pay to them, and whilst the amounts owing are small, I accept they are significant to Ms Saphoo and Mr Yingkamhang. Mr Mathews in his submissions says that there has been some loss of faith in the employment processes because of the inability to secure payment.

Mr Yunan's circumstances and ability to pay

[23] The absence of any participation by Mr Yunan means that the Court is not able to reach any conclusions as to the financial circumstances of Mr Yunan. However, the Court assumes that he is able to pay a fine.

Deterrence

[24] There is a need to deter breaches of orders of the Authority and to encourage compliance with orders of the Authority. There is also a public interest in maintaining confidence in mediation and settlements under s 149 of the Act.

[25] It is appropriate in this matter to impose a sanction under s 146(6) and order that Mr Yunan be fined.

[26] The maximum fine that can be imposed is \$40,000.

Quantum of a fine

[27] The quantum of the fine should be consistent with comparable cases. Mr Mathews refers to fines awarded in several judgments where the employer has taken no steps to address the breach, there are no issues about capacity to pay, and no history of previous breaches. In those cases, he submits the fines start at approximately \$10,000.⁵

⁵ *Carruthers v Brommel Roofing Ltd* [2020] NZEmpC 22; *Gates v DC Cladding and Re-Clad Solutions Ltd* [2020] NZEmpC 176; and *McKay v Wanaka Pharmacy Ltd* [2021] NZEmpC 79, [2021] ERNZ 304.

[28] There are some cases in which the fines imposed have been higher than \$10,000, but Mr Mathews accepted some of these are not truly comparable to the present situation.⁶ Others involve higher amounts and a history of non-compliance.⁷ Another case with a higher fine can be distinguished because there had been a failure to comply with an improvement notice issued by a Labour Inspector, and there was some obstructive behaviour.⁸

[29] Mr Mathews submits the cases in which lower fines than \$10,000 have been imposed are few and generally involve attempted remediation.⁹

[30] An assessment of a proportional fine does involve some consideration of the amounts involved. The amounts outstanding in this matter are not large.

[31] In the circumstances of this case Mr Yunan is to be fined a total of \$10,000.

Should part of the fine be paid to Ms Saphoo and Mr Yingkamhang?

[32] Section 140(7) enables the Court having made an order under subs 6(d) to direct that the whole or any part of the fine be paid to the employee concerned.

[33] Ms Saphoo and Mr Yingkamhang have had to go to the cost and effort of bringing this proceeding to obtain compliance with the orders of the Authority. Those orders should have simply been complied with. The application for costs which is yet to be decided is weighed. Seventy-five percent of the fine of \$10,000 is to be paid to Ms Saphoo and Mr Yingkamhang in equal amounts of \$3,750.

⁶ *Nathan v Broadspectrum (New Zealand) Ltd* [2017] NZEmpC 90 and *Nathan v Broadspectrum (New Zealand) Ltd* [2017] NZEmpC 116. In *Nathan*, the second fine imposed was \$25,000. These cases, however, were about reinstatement and the second fine took into consideration the failure to comply after the first judgment with a reinstatement order.

⁷ *McMillan v Resque Corporation 20/20 Ltd* [2023] NZEmpC 76, [2023] ERNZ 308; and *Ugone v Star Moving Ltd* [2024] NZEmpC 48, [2024] ERNZ 108.

⁸ *Myatt v Pacific Applications Ltd* [2016] NZEmpC 24 at [21].

⁹ *Savage v Wai Shing Ltd* [2019] NZEmpC 153, (2019) 17 NZELR 100.

Costs and disbursements

[34] Costs are sought in the sum of \$4,300, which is an amount lower than scale costs calculated on a 1A basis.¹⁰ Costs are awarded in full together with the filing fee claimed as a disbursement of \$337.

Outcome and orders

[35] Mr Yunan is ordered to pay a fine of \$10,000 pursuant to s 140(6)(d) of the Act.

[36] Mr Yunan is ordered to pay \$3,750 of the fine to Ms Saphoo and \$3,750 of the fine to Mr Yingkamhang. The balance of the fine in the sum of \$2,500 is to be paid to the Crown.

[37] Mr Yunan is ordered to pay costs in the sum of \$4,300 together with disbursements in the sum of \$337 to Ms Saphoo and Mr Yingkamhang.

[38] Mr Yunan remains liable for payments of the amounts the Authority ordered in its determination. A continued failure to pay those amounts and the fine and costs and disbursements in this proceeding may lead to further enforcement action.

Helen Doyle
Judge

Judgment signed at 10.30 am on 12 August 2025

¹⁰ “Employment Court of New Zealand Practice Directions” (1 September 2024) <www.employmentcourt.govt.nz> at 18.