

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2025] NZEmpC 213
EMPC 425/2024**

IN THE MATTER OF an application for a compliance order

BETWEEN HAROLD JOSEPH CARR
 Plaintiff

AND HAMILTON CIVIL PLANT LIMITED
 Defendant

Hearing: 18 September 2025
 (Heard at Auckland and via audio-visual link)

Appearances: G Ogilvie, advocate for plaintiff
 No appearance for defendant

Judgment: 18 September 2025

ORAL JUDGMENT OF JUDGE KATHRYN BECK

[1] On 18 September 2025, I heard the plaintiff’s application for sanctions against Hamilton Civil Plant Ltd (Hamilton Civil Plant). I gave an oral judgment granting the plaintiff’s application and making orders in his favour. I indicated that a written judgment would follow which would include reference to legislation and case law. This is that judgment.

[2] Mr Carr is seeking sanctions against his former employer, Hamilton Civil Plant, because of its failure to satisfy a compliance order made by the Employment Relations Authority in its determination dated 11 October 2022.¹

¹ *Carr v Hamilton City Plant Ltd* [2022] NZERA 523.

[3] That determination related to the company's failure to pay a settlement it reached with Mr Carr on 6 March 2020. The Authority therefore made a compliance order for the following amounts:

- (a) \$684.80 holiday pay;
- (b) \$9,250 compensation; and
- (c) \$3,000 costs.

[4] It also ordered Hamilton Civil Plant to pay Mr Carr \$690 in costs and reimbursement of the \$71.56 filing fee.

[5] However, Mr Carr says that the sums that Hamilton Civil Plant was ordered to pay have not been paid. That has given rise to Mr Carr's application for orders under s 140(6) of the Employment Relations Act 2000 (the Act).

[6] Where compliance orders made by the Authority under ss 137(1) or 137(2) of the Act have not been complied with, the adversely affected party may apply to the Court for orders under s 140(6), which states:

140 Further provisions relating to compliance order by court

...

- (6) 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.

[7] In *Peter Reynolds Mechanical Ltd v Denyer (Labour Inspector)*,² the Court of Appeal referred to a range of factors to consider in assessing sanctions under s 140(6).

[8] The factors referred to by the Court of Appeal are not exhaustive but include the nature of the default (whether it is deliberate or wilful), whether it is repeated, without excuse or explanation, and if it is ongoing. The Court will also take into account any remedial steps taken, the defendant's track record, the respective circumstances of the employer and employee, the appropriateness of a deterrent and proportionality.³

Sanctions are appropriate

[9] The first issue to address is whether a sanction should be imposed at all.

[10] Mr Ogilvie submits that a sanction is appropriate in the circumstances and considers a proportionate quantum to be \$18,000. Turning to the factors referred to in *Peter Reynolds*, Mr Ogilvie's submissions can be summarised in the following way:

- (a) the defendant's default has been prolonged, ongoing and deliberate;
- (b) it has failed to provide any excuse or explanation;
- (c) the impact on Mr Carr has been significant; and
- (d) the fine sought of \$18,000 is at a similar level to comparable cases.

[11] This morning, I heard from Mr Carr who confirmed that he has not received any payment from the company; nor has he entered into any compromise that would see the debts created by the determination resolved in some other way. Mr Carr's evidence also states that he has attempted to contact the defendant's parent company in Australia but has been unsuccessful.

² *Peter Reynolds Mechanical Ltd v Denyer (Labour Inspector)* [2016] NZCA 464, [2017] 2 NZLR 451, [2016] ERNZ 828.

³ At [76]—[77].

[12] Hamilton Civil Plant had filed a challenge to the Authority's determination but then took no steps. At that time it was represented by its sole director and shareholder, Mr Negri.

[13] The challenge was administratively withdrawn by order of Judge Holden on 7 November 2023 because it had taken no steps.⁴ The Court noted that Mr Negri was preoccupied with other matters.

[14] The company has not participated at all in these current proceedings, despite having been served at the registered address for service. Despite taking no steps, it was also advised of today's hearing.

[15] The proceedings were called in the Court with Mr Carr and Mr Ogilvie attending via audio-visual link (AVL). The Court did not receive any notification that the defendant wished to attend in person or via AVL. There was no appearance for the defendant.

[16] However, the company is still on the Companies Register and a return was filed as recently as 6 August 2025.

[17] Mr Ogilvie submits that a fine is appropriate in the present matter because the breaches arise from an agreed settlement. As the director, Mr Negri cannot now challenge the settlement or default without any clear basis for doing so. Mr Ogilvie says the breaches are unreasonable and deliberate, and the factors in the present proceeding support an intention to deliberately breach and ignore statutory obligations.

[18] I am inclined to agree. I am satisfied that this is an appropriate case for a sanction to be imposed. The second issue is what level of fine should be imposed.

⁴ File EMPC 150/2023.

The level of fine to be imposed

[19] Mr Ogilvie notes that assessing the level of fine to be imposed is a fact-based analysis. He relies on *Cooper v Phoenix Publishing Ltd* as comparable authority for the quantum he proposes.⁵ In *Cooper*, a fine of \$12,000 was ordered for ongoing and deliberate breaches of a settlement agreement. Mr Ogilvie justifies the higher figure of \$18,000 he has proposed by reference to what he submits is the wilful and deliberate attempt to ignore the compliance order without any apparent basis to do so.

[20] As noted above, Hamilton Civil Plant was engaged before the Authority, and had previously filed a challenge to the determination in this Court. However, it has since disengaged from the process, has failed to appear at this hearing, and does not provide any excuse or basis for doing so. I infer that the non-payment is deliberate.

[21] The failure to provide any information means I have no basis for finding payment of the amounts due in respect of the Authority's compliance order would cause the company any difficulty.

[22] Mr Carr gave evidence about the significant impact this has had on him, particularly the distress caused by the delay in receiving his entitlements. He feels it is very unfair and says it has been very stressful.

[23] I have reviewed *Cooper* and recent decisions of this Court made under s 140(6)(d).

[24] *Cooper* is less comparable to the present proceedings. Although it involved deliberate breaches of a settlement agreement, the defendant had a proven poor track record and was identified in multiple cases involving a failure to pay wages and holiday pay. That was a significant factor in the Court's assessment.⁶ In the present case, there is no evidence before me of the defendant's history.

[25] In *Lee v Yamaya NZ Ltd*, a fine of \$8,000 was imposed where the defendant failed to engage in the process, and the debt due was around \$40,000. The defendant

⁵ *Cooper v Phoenix Publishing Ltd* [2020] NZEmpC 111, [2020] ERNZ 332.

⁶ At [21].

was a family-run business and was appearing in Court for the first time. It was also able to provide some evidence of financial hardship.⁷

[26] In *Cotton v Gosling*, a \$10,000 fine was imposed where the defendant failed to appear for the formal proof hearing. Significant efforts had been made to effect service, but there was no participation. The debt due was around \$20,000.⁸

[27] At the lower end, the Court ordered a fine of \$5,000 in *Jindal v RKM Smith Enterprises Ltd* for breaches relating to a settlement agreement and where the employer was refusing to engage. The debt due amounted to approximately \$5,000, excluding a \$1,000 penalty ordered by the Authority.⁹

[28] Here, the debt due is \$13,696.36.

[29] *Peter Reynolds* confirmed that the primary purpose of a compliance order is to compel the defaulting party's compliance, but that there is a further purpose – to impose a sanction for non-compliance.¹⁰

[30] Breaching a compliance order is a serious matter and warrants a serious response. The Authority, the Court and the parties are entitled to expect orders to be obeyed and it is likely to be in only reasonably rare cases that non-compliance would be excused. Therefore, a sanction is called for.

[31] Having considered those decisions, and the submissions made, I consider that a fine of \$8,000 is appropriate.

[32] In setting the amount of the fine, I take into account that the default in payment has been going on for some time (more than five years), and even though it appears Hamilton Civil Plant is still in business, there has been no engagement with Mr Carr or his representative. It has had a significant impact on Mr Carr, and while I take that

⁷ *Lee v Yamaya NZ Ltd* [2025] NZEmpC 151.

⁸ *Cotton v Gosling* [2025] NZEmpC 158.

⁹ *Jindal v RKM Smith Enterprises Ltd* [2023] NZEmpC 183.

¹⁰ *Peter Reynolds Mechanical Ltd*, above n 2.

into account, I do not consider the level of fine in this matter should exceed the debt due.

[33] In the circumstances of this case, I consider that a fine of \$8,000 is proportionate.

[34] Under s 140(7) of the Act, the Court may order some or all of the fine to be paid to the employee who brought the proceeding. That is appropriate here to recognise the time and effort that has been required by Mr Carr to bring this matter to Court. I order that the entire fine be paid to him.

Outcome

[35] I make the following orders:

- (a) Pursuant to s 140(6) of the Act, Hamilton Civil Plant Ltd is to pay a fine of \$8,000, all of which is to be paid to Mr Carr under s 140(7).
- (b) Hamilton Civil Plant Ltd is to pay Mr Carr a contribution to his costs in the sum of \$500 and \$337 as a reimbursement for the filing fee.

[36] These sums are to be paid within 21 days of the date of this judgment.

[37] For the sake of clarity, the existing debt of \$13,696.36 remains payable.

[38] If such sums are not paid, Mr Carr remains able to pursue the amounts due to him through the usual recovery procedures in the District and High Courts.

Kathryn Beck
Judge

Judgment delivered orally at 10.10 am on 18 September 2025