

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2019] NZERA 303  
3059296

BETWEEN                      ALLIED ASPHALT LIMITED  
Applicant

AND                              JASON BOYLE  
Respondent

Member of Authority:      Rachel Larmer

Representatives:            Russell Drake, Advocate for Applicant  
No Appearance by Respondent

Investigation Meeting:     23 May 2019 at Tauranga

Written Record of Oral  
Determination:              23 May 2019

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**ORAL DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     In its substantive determination dated 6 March 2019 the Authority ordered Mr Boyle to pay Allied Asphalt Limited \$10,571.56 within 28 days of the date of that determination consisting of:<sup>1</sup>

- a. \$8,000 as a mistaken wages overpayment;
- b. \$2,500 contribution towards its legal costs; and
- c. \$71.56 to reimburse its filing fee.

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<sup>1</sup> *Allied Asphalt Limited v Boyle* [2019] NZERA Auckland 125.

[2] The Authority's substantive determination was served on the parties by the Authority on 6 March 2019. Allied Asphalt also personally served the determination on Mr Boyle on 15 April 2019.

[3] To date the respondent has not made any attempts to pay any of the amounts he has been ordered to pay Allied Asphalt.

[4] On 12 April Allied Asphalt emailed a letter to Mr Boyle demanding payment of the amount he had been ordered to pay it. This same letter was also couriered to Mr Boyle's residential address on 15 April 2019 and was signed for as delivered at 9.54am that same day.

[5] In addition, Allied Asphalt also arranged for a process server, Mr Twyford, to serve the same letter on Mr Boyle. Service occurred at Mr Boyle's home address at 11.30am on 15 April 2019. Mr Twyford has filed an affidavit of service setting out details of his service of the Authority's substantive determination and Allied Asphalt's demand for payment on Mr Boyle.

[6] In his affidavit of service dated 16 March 2019 Mr Twyford deposes that he handed the above documents to a person who had identified himself as Mr Boyle, who accepted the documents without protest and who acknowledged receipt of the Authority's substantive determination.

[7] Allied Asphalt also personally served its Statement of Problem and the Notice of Hearing of today's investigation meeting on Mr Boyle. Its affidavit of service of these documents was dated 15 May 2019.

[8] Mr Boyle has not filed a Statement in Reply to this compliance order application. Nor has he sought leave to file a Statement in Reply out of time. No challenge has been filed to the Authority's substantive determination.

[9] The Authority is satisfied that:

- a. Mr Boyle has been served with a copy of its substantive determination dated 6 March 2019;<sup>2</sup>

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<sup>2</sup> Above, n1.

- b. Allied Asphalt has demanded that Mr Boyle pay it the amounts he has been ordered by the Authority to pay;
- c. Mr Boyle has not responded at all to Allied Asphalt's demands for payment;
- d. No payments at all have been made towards the amounts Mr Boyle has been ordered to pay Allied Asphalt;
- e. Mr Boyle has been served with this compliance order application;
- f. Although he has been put on notice of these proceedings, Mr Boyle has elected not to defend Allied Asphalt's application for a compliance order;
- g. Mr Boyle was also on notice of the investigation meeting today, but elected not to attend;
- h. Mr Boyle has not made any arrangements, or sought to make any arrangements, to pay the amounts he has been ordered to pay Allied Asphalt;
- i. Mr Boyle is in breach of the Authority's substantive determination;
- j. Mr Boyle has not done anything to comply with the Authority's substantive determination; and
- k. Mr Boyle is unlikely to voluntarily pay the amounts he has been ordered to pay Allied Asphalt.

[10] The Authority is satisfied that it is necessary and appropriate to exercise its discretion to issue a compliance order.

[11] Allied Asphalt has discharged its onus of establishing on the balance of probabilities that Mr Boyle is unlikely to voluntarily pay Allied Asphalt the amounts he owes it, so it is therefore necessary to order him to comply with paragraph [29] of the Authority's substantive determination dated 6 March 2019.

### **Compliance Order**

[12] In accordance with the Authority's power under s 137(2) of the Employment Relations Act 2000 (the Act), the Authority orders Mr Boyle, within 28 days of the date of this determination, to comply with paragraph [29] of the Authority's substantive determination date 6 March 2019 by paying Allied Asphalt \$10,571.56.

### **What if any interest should be awarded?**

[13] Allied Asphalt seeks interest on the amount outstanding.

[14] There is no reason why interest should not be granted because Mr Boyle, by not paying the amount he was ordered to pay, has deprived Allied Asphalt of the use of its money.

[15] In accordance with the Interest on Money Claims Act 2016, Mr Boyle is ordered to pay Allied Asphalt interest of \$74.83, as calculated using the Ministry of Justice online interest calculator, for the period 7 March 2019 (the day after the amount Mr Boyle owed was determined by the Authority) to 23 May 2019, being the date of this investigation meeting.

[16] This brings the total amount Mr Boyle is required to pay Allied Asphalt to \$10,646.39 (being \$10,571.56 original amount plus \$74.83 interest up to the date of this determination).

[17] Interest will continue to accrue, in accordance with the rate specified in the Ministry of Justice online interest calculator, on any amount of the \$10,646.39 which is outstanding as at 24 May 2019 onwards until that amount has been paid in full by Mr Boyle to Allied Asphalt.

### **What if any costs and disbursements should be awarded?**

[18] Allied Asphalt as the successful party is entitled to a contribution towards its actual legal costs.

[19] Allied Asphalt says it has incurred actual legal costs in excess of \$4,000 prior to the investigation meeting today. It now seeks an award of indemnity costs in its favour.

[20] That application for indemnity costs is declined on the basis it is more appropriate for the Authority to adopt its usual notional daily tariff based approach to costs.

[21] The Authority's current notional starting daily tariff is \$4,500 for the first day of an investigation meeting. This matter involved approximately one hour of investigation meeting time, so the notional starting point for assessing costs in this matter is \$750.

[22] There are no factors that warrant this notional starting tariff being decreased. However Mr Boyle's failure to engage in these proceedings at all has unnecessarily increased Allied Asphalt's actual legal costs.

[23] Allied Asphalt has had to arrange for personal service of the Statement of Problem and of the Notice of Hearing. It has also had to incur the legal cost of arranging for, and then filing with the Authority, two affidavits of service. Allied Asphalt has also been required to liaise with the Authority more than would normally be required because of issues that have arisen over the service of these proceedings.

[24] The Authority considers that its notional starting tariff should be doubled to reflect the additional legal costs Allied Asphalt has had to incur as a result of Mr Boyle's failure to engage in this process.

[25] Mr Boyle is ordered to contribute \$1,500 towards Allied Asphalt's actual legal costs, which the Authority notes have far exceeded the amount awarded.

[26] Mr Boyle is also required to reimburse Allied Asphalt \$558.90 (as per the invoices provided) for the disbursements it has had to incur, as a result of having to engage process servers to ensure Mr Boyle was on notice of these proceedings.

### **Warning to Mr Boyle**

[27] The Authority in its determination formally puts Mr Boyle on notice that failure by him to comply with the compliance order that the Authority has issued in this determination may result in Allied Asphalt applying to the Employment Court for the exercise of the Court's powers under s 140 of the Act.

[28] Under s 140(6) of the Act, the Employment Court has the power to make a range of orders, some of which could potentially include (but are not limited to) imposing a sentence of imprisonment not exceeding three months, imposing a fine of up to \$40,000 or ordering that a defaulting party's property be sequestered.

## **Summary of Authority orders**

[29] Within 28 days of the date of this determination Mr Boyle is ordered to:

- a. Comply with the Authority's substantive determination dated 6 March 2019 by paying Allied Asphalt \$10,571.56;
- b. Pay Allied Asphalt \$74.83 interest for the period 7 March to 23 May 2019 inclusive on the outstanding amount above;
- c. Pay Allied Asphalt \$1,500 towards its legal costs;
- d. Pay Allied Asphalt \$558.90 to reimburse it for its disbursements in this matter.

[30] Mr Boyle has therefore been ordered in this determination to pay Allied Asphalt a total of \$12,705.29 in this determination, within 28 days of the date of this determination.

[31] Interest is also to run on any outstanding amount Mr Boyle owes Allied Asphalt as at 24 May 2019 until the full amount has been paid to Allied Asphalt at the rate to be calculated using the Ministry of Justice online interest calculator established by the Interest on Money Claims Act 2016.

**Rachel Larmer**  
**Member of the Employment Relations Authority**