

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 195
3343920

BETWEEN	TIELE APIUTA First Applicant
AND	RAHUL JAIN Second Applicant
AND	MARRI-ANNE THOMPSON Third Applicant
AND	NIKYLA THOMPSON Fourth Applicant
AND	JAMES TUCKER Respondent

Member of Authority:	Rachel Larmer
Representatives:	Kim Ahern, advocate for the Applicants No appearance by the Respondent
Investigation Meeting:	4 April 2025 in Auckland
Oral Determination:	4 April 2025
Written Record of Oral Determination:	4 April 2025

ORAL DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Tiele Apiuta, Rahul Jain, Marri-Anne Thompson and Nikyla Thompson (the applicants) were employed by JV No. 6 Limited (JV), which was previously known as “Mad Mex” and which traded as “Downlow”. JV went into liquidation on 28 March 2024. The respondent, Mr James Tucker, is the sole director of JV (in Liquidation).

[2] The applicants sought a compliance order against Mr Tucker to compel him to pay them the wage arrears and other money they were awarded in the Authority's substantive determination dated 6 September 2024.¹

The Authority's substantive determination

[3] JV (In Liquidation) failed to pay the applicants their wages in full or on time. The Authority investigated the applicants' wage arrears claims during an in-person investigation meeting held on 5 September 2024. The applicants' succeeded with their claims in an Authority determination dated 6 September 2024.²

[4] The Authority also determined that Mr Tucker was 'a person who was involved in breaches of employment standards', as per s 142W of the Employment Relations Act 2000 (the Act). The applicants were given leave under s 142Y(2) of the Act to recover their wage arrears and other money from Mr Tucker personally, because JV (In Liquidation) was unable to pay them.

[5] Mr Tucker was ordered within 28 days of the date of the substantive determination to pay:

- (a) Rahul Jain \$17,154.98 gross, consisting of
 - (i) \$15,652.52 wage arrears;
 - (ii) \$922.07 interest to the date of the substantive investigation held on 6 September 2024;
 - (iii) \$562.50 contribution towards his legal costs;
 - (iv) \$17.89 partial reimbursement of filing fee;
- (b) Tiele Apiuta \$2,063.71 gross, consisting of:
 - (i) \$1400.80 wage arrears;
 - (ii) \$82.52 interest to the date of the substantive investigation held on 6 September 2024;
 - (iii) \$562.50 contribution towards his legal costs;
 - (iv) \$17.89 partial reimbursement of filing fee;

¹ *Apiuta and Ors v Tucker* [2024] NZERA 539.

² *Apiuta*, above n1.

- (c) Marri-Anne Thompson \$1,431.10 gross, consisting of
 - (i) \$803.38 wage arrears;
 - (ii) \$47.33 interest to the date of the substantive investigation held on 6 September 2024;
 - (iii) \$562.50 contribution towards her legal costs;
 - (iv) \$17.89 partial reimbursement of filing fee; and
- (d) Nikyla Thompson \$1,988.08 gross, consisting of:
 - (i) \$1,329.38 wage arrears;
 - (ii) \$78.31 interest to the date of the substantive investigation held on 6 September 2025;
 - (iii) \$562.50 contribution towards her legal costs;
 - (iv) \$17.89 partial reimbursement of filing fee.

[6] Mr Tucker was also ordered to continue paying interest to each applicant on the wage arrears and other money they were owed from 7 September 2024 until they had been paid all of the money and interest they were owed.

[7] Mr Tucker has not complied with the Authority's substantive determination. He has not paid any of the applicants anything.

Non-engagement by Mr Tucker

[8] The statement of problem (SoP) was served on Mr Tucker on 13 December 2024. He lodged a statement in reply (SiR) on 9 January 2025. However, instead of completing the required information on Form 3, Mr Tucker instead attached emails he had sent the Authority dated 8 January 2024 and 3 October 2024 and the Authority's email to him dated 4 October 2024.

[9] Mr Tucker's email dated 8 January 2024 advised that liquidators would be appointed within the next two weeks for JV. Mr Tucker's email dated 3 October 2024 objected to the Authority's substantive determination and indicated he wanted to challenge it. The Authority's email to Mr Tucker dated 4 October 2024 told him he had to make any challenge to the Employment Court, not the Authority. No challenge was lodged.

[10] None of the emails attached to Mr Tucker's SiR were relevant to this compliance order application.

[11] On 13 January 2025 the Authority emailed Mr Tucker to set up a case management conference (CMC). He was also advised to start compiling his financial information, as he was told he would be required to lodge an affidavit setting out his financial situation if he wanted to defend the compliance order application. The Authority listed the specific information Mr Tucker was required to provide.

[12] Mr Tucker did not respond to the Authority's attempts to communicate with him by phone and email. Mr Tucker was informed of the time and date of the CMC by email, by voicemails left on the phone number he had recorded in the SiR and by courier, but he did not attend the CMC. The Authority called Mr Tucker for the CMC, but he did not answer the call.

[13] The Directions of the Authority (DoA) recording the CMC timetabling directions and the Notice of Investigation Meeting (Notice of IM) were served on Mr Tucker on 29 January 2025 by courier, at the address he had recorded in the SiR. A further copy of the DoA and Notice of IM were served on Mr Tucker on 30 January 2025 by courier, at the address he has recorded for himself on the Companies Register as the sole director of JV (In Liquidation). Photo proof of delivery was provided to the Authority.

[14] The applicants lodged their evidence on 12 March 2025 by email, which was copied to Mr Tucker. He replied to that email the same morning saying "Make sure you also take note of the 6 new liquidations in December last year and the 2 more that are likely by the end of this month." Mr Tucker has not provided any other information to the Authority.

[15] According to the DoA dated 24 January 2025, Mr Tucker was required to disclose his current financial situation (the specific information sought was recorded in the DoA). He was also required to lodge an affidavit (the specific matters to be covered were recorded in the DoA) by 28 February 2025. Mr Tucker did not provide any information and he did not lodge any evidence.

[16] On 4 April 2025 Mr Tucker informed the Authority by email that he would not be providing any information about his financial situation.

[17] On 19 March 2025 the Authority emailed Mr Tucker another copy of the DoA dated 24 January 2025 and pointed out he was in breach of the directions to provide information and lodge evidence. No response was received.

Material facts

[18] The applicants sought payment from Mr Tucker of the amounts awarded to them in the substantive determination, without success. The first request was made on 17 September 2024. The SoP was lodged on 4 December 2024. A further request was made on 5 March 2025.

[19] Mr Tucker did not respond to the first request. He lodged an irrelevant SiR. Mr Tucker responded to the 5 March 2025 request by stating that he was not in a financial position to make any payments to the applicants. No evidence was provided to support that claim.

The Authority's investigation

[20] The Authority held an in-person investigation meeting on 4 April 2025. All of the applicants attended with their advocate. The applicants gave evidence under affirmation and Authority.

[21] Mr Tucker did not attend the Authority's investigation meeting. He emailed the Authority shortly before the start time of the investigation meeting, stating he would not be attending and would not be providing any of his financial information, as he had been directed to do if he wanted to defend the compliance order application.

[22] Mediation did not occur. Mr Tucker did not comply with the Authority's direction to attend mediation for the substantive matter. The nature of the applicants' claim, and Mr Tucker's non-engagement, meant mediation was not considered appropriate for this matter.

The issues

[23] The following issues are to be determined:

- (a) Has Mr Tucker complied with the substantive determination?
- (b) If not, should a compliance order be issued?
- (c) If so, what if any conditions should it contain?

(d) What costs and disbursements should be awarded?

Has Mr Tucker complied with the substantive determination?

[24] Mr Tucker has taken no steps to comply with the Authority's substantive determination. The applicants are still owed all of the money they were awarded in that determination, plus interest that has continued to accrue since then.

Should a compliance order be issued?

[25] It was appropriate to issue a compliance order, because Mr Tucker was unlikely to pay the applicants without one.

What if any conditions should the compliance order contain?

[26] Within 28 days of the date of the written record of this oral determination, Mr Tucker is ordered to comply with paragraphs [72] to [74] of the Authority's substantive determination dated 6 September 2024.³

[27] Paragraphs [72] and [73] of the substantive determination required Mr Tucker to pay:

- (a) **Rahul Jain** \$17,154.98 gross;
- (b) **Tiele Apiuta** \$2,063.71 gross;
- (c) **Marri-Anne Thompson** \$1,431.10 gross;
- (d) **Nikyla Thompson** \$1,988.08 gross.

[28] Paragraph [74] of the substantive required Mr Tucker to pay the applicants interest on the amounts outstanding from 6 September 2024 (being the date of the substantive determination) to 4 April 2025 (being the date of this compliance order). Interest is to be calculated using the Civil Debt Calculator on the Ministry of Justice website.

[29] Mr Tucker is ordered to pay the following interest payments to each applicant, which covers interest up to the date of the investigation meeting today:

- (a) **Rahul Jain** \$558.92 gross;

³ *Apiuta*, above n1.

- (b) **Tiele Apiuta** \$130.95 gross;
- (c) **Marri-Anne Thompson** \$46.63 gross;
- (d) **Nikyla Thompson** \$64.77 gross.

[30] Mr Tucker is ordered to continue paying interest to each applicant on the total amount of money they are owed until they have been paid in full. Interest continues to run from 5 April 2025 until each applicant has been fully paid all of the wage arrears and other money (including interest) they are owed. Future interest is also to be calculated using the Civil Debt Calculator on the Ministry of Justice website.

Breach of this compliance order

[31] Mr Tucker is put on notice that failure to comply with this compliance order may result in the applicants making an application to the Employment Court for the exercise of the Court's powers under s 140 of the Act.

[32] Under s 140(6) of the Act, the Employment Court has the power to make a range of orders, which could potentially include (but are not limited to):

- (a) Imposing a sentence of imprisonment not exceeding three months;
- (b) Imposing a fine of up to \$40,000; or
- (c) Ordering that a defaulting party's property be sequestered.

What costs and disbursements should be awarded?

[33] The applicants, as the successful parties, are entitled to a contribution towards their actual legal costs. Costs are assessed according to the Authority's notional daily tariff, which is currently \$4,500 for the first day of an investigation meeting.

[34] This matter involved a half day investigation meeting, so the notional starting point, on a pro-rated basis, for assessing costs is \$2,250.

[35] The applicants have each incurred legal costs in excess of the amount recoverable under the notional daily tariff. Each applicant is therefore entitled to recover legal costs of \$562.50, which is a quarter of the notional starting tariff. They are also each individually entitled to be reimbursed for a quarter of the filing fee of \$71.55, which is \$17.89 per applicant.

[36] Within 28 days of the date of this determination, Mr Tucker is ordered to contribute \$580.39 to each applicant as a contribution to their actually incurred costs and disbursements.

[37] Interest will be added to these amounts from 3 May 2025, if Mr Tucker's contribution to each applicants' legal costs and disbursements has not been paid in full to each application by that date. Interest is to be calculated using the Civil Debt Calculator on the Ministry of Justice website, and it runs until the total amount each applicant is owed (including all interest) has been paid in full.

Summary of orders

[38] In accordance with the Authority's power under s 137(2) of the Employment Relations Act 2000 (the Act), Mr Tucker is ordered within 28 days of the written record of this determination to comply with paragraphs [72] to [74] of the Authority's substantive determination dated 6 September 2024 by paying:

- a. **Rahul Jain** \$17,713.90 gross;
- b. **Tiele Apiuta** \$2,194.66 gross;
- c. **Marri-Anne Thompson** \$1,477.73 gross;
- d. **Nikyla Thompson** \$2,052.85 gross.

[39] Interest will continue to accrue on the total gross amount due to each applicant in paragraph [35] above from 5 April 2025 until paid in full. Interest is to be calculated using the Civil Debt Calculator on the Ministry of Justice's website.

[40] Within 28 days of the date of the written record of this determination, Mr Tucker is also ordered to pay each applicant \$580.39 towards their actual legal costs and disbursements for this compliance order application. Interest will accrue on the contribution to legal fees of \$580.39 from 3 May 2025 onwards, until it has been paid in full by Mr Tucker to each applicant.