

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 264  
3329980

BETWEEN                      AUCKLAND TRANSPORT  
Applicant

AND                              KAMAL (BILLY) PRASAD  
Respondent

Member of Authority:        Shane Kinley

Representatives:             Charlotte Parkhill, counsel for the applicant  
Allan Halse, advocate for the respondent

Investigation meeting:      On the papers

Submissions received:      Up to 22 April 2025

Determination:                13 May 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     On 6 March 2024, I issued a determination in an earlier matter finding that Kamal (Billy) Prasad’s claims of unjustified disadvantage were unsuccessful, as were alternative versions of his claims (the substantive determination).<sup>1</sup> No orders were made in favour of Mr Prasad. On 17 May 2024, I issued a costs determination ordering Mr Prasad pay Auckland Transport (AT) the sum of \$8,000 as a contribution to costs (the costs determination).<sup>2</sup>

[2]     As Mr Prasad has not paid the ordered contribution to costs, AT seeks a compliance order requiring Mr Prasad complies with the costs determination, an order

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<sup>1</sup> *Kamal (Billy) Prasad v Auckland Transport* [2024] NZERA 132 at [68].

<sup>2</sup> *Kamal (Billy) Prasad v Auckland Transport* [2024] NZERA 291 at [20].

of interest and costs.

[3] Mr Prasad opposes the application for a compliance order.

### **The Authority's investigation**

[4] A case management conference was held in relation to this matter on 30 January 2025 where I directed this matter be investigated on the papers. Submissions were received on behalf of AT and Mr Prasad.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **The issues**

[6] The issues requiring investigation and determination are:

- (a) Whether the compliance order requested by AT under ss 137 and 138 of the Act should be issued?
- (b) Should an order of interest be made on the costs owing?
- (c) Should either party contribute to the costs of representation of the other party?

### **Relevant background**

[7] On 17 May 2024, I issued the costs determination ordering Mr Prasad pay AT the sum of \$8,000 as a contribution to costs.<sup>3</sup>

[8] AT's submissions say this amount has not been paid and refer to attempts to engage with Mr Prasad's advocate to discuss payment arrangements, which were not substantively responded to. I am satisfied AT has not received the payments ordered to be made to it by Mr Prasad as a contribution to costs.

### **Should a compliance order be issued?**

[9] AT refer to the Court's judgment in *Television New Zealand Ltd v E tū Inc* acknowledging a compliance order is a discretionary power that must be exercised to

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<sup>3</sup> Ibid.

promote the policy and objects of the Act, taking into account relevant factors.<sup>4</sup> AT say the following are relevant factors in favour of ordering compliance:

- (a) Continued non-payment of the costs order by Mr Prasad is contrary to public interest and risks bringing the administration of justice into disrepute;
- (b) No evidence had been provided suggesting it would be impractical to order compliance;
- (c) Compliance was unlikely if an order was not made; and
- (d) Declining to make a compliance order would in effect undermine the Authority's decision to decline to stay the proceedings which led to the costs determination.<sup>5</sup>

[10] Mr Prasad says “the granting of a compliance order is not in accordance with the objectives of the Act and would result in the Authority supporting the already recognised imbalance of power” between AT and Mr Prasad. Doing so would give AT “the potential to place further pressure on Mr Prasad causing financial hardship, greater distress and anxiety”. Delays in payment by Mr Prasad were asserted to not prejudice AT, while the consequences of a compliance order on Mr Prasad would be “disproportionate and brutal”. Mr Prasad says granting a compliance order would be “inequitable, unfair and unnecessary”, and inconsistent with the Authority's role under s 157 of the Act.

[11] Mr Prasad asserted AT's actions in seeking a compliance order and indicating it intends to enforce the order if granted and not complied with, were bad faith actions. Reference was also made to a separate process Mr Prasad was involved in with AT as not being “the behaviours of an employer being constructive in maintaining a productive employment relationship with Mr Prasad”.

[12] Mr Prasad says he has applied for a stay of the costs pending the outcome of his de novo challenge to the substantive determination. Mr Prasad also refers to a separate application for a stay of the costs award and the application for a compliance order. He says should he be successful in challenging the substantive determination he would be entitled to have the costs award reversed. He also says he “has limited means and is finding it difficult to pay such a large amount”.

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<sup>4</sup> *Television New Zealand Ltd v E tū Inc* [2024] NZEmpC 93 at [88].

<sup>5</sup> I declined to stay AT's costs applications in Directions issued on 9 April 2024 for the costs determination, as referenced in the costs determination at [9].

[13] Mr Prasad also refers to the potential for miscarriage of justice based on his inability to access information held by Jo Thomson in relation to his file, including the details of witnesses I directed be provided by 20 February 2025. This appears to relate to an indication by Mr Prasad's advocate at the case management conference of an intention to provide witness statements and potentially to issue a witness summons in relation to this matter. Submissions for Mr Prasad acknowledge no such witness statements or summons have been lodged.

[14] AT submitted in reply:

- (a) it was not acting in bad faith in seeking to enforce the costs determination;
- (b) reference to the separate process Mr Prasad was involved in with AT was irrelevant to AT's application for a compliance order, as were references to Mr Prasad's inability to access information held by Ms Thomson;
- (c) a compliance order would be equitable, fair and necessary;
- (d) Mr Prasad has not applied for a stay on the application for a compliance order;
- (e) Mr Prasad's de novo challenge had not yet been timetabled and delays in hearing a challenge can be taken into account by the Authority when considering a compliance order application; and
- (f) No evidence had been provided of Mr Prasad's inability to pay the amount awarded in the costs determination.

[15] Given the amount of time that has passed since the orders in the costs determination were made by the Authority and the fact those orders have not been observed, I consider it is appropriate to make a compliance order in AT's favour under s 137(1)(b) of the Act.

[16] In reaching this view, I consider AT is entitled to the benefit of its success in relation to the costs determination, which has not been challenged. I do not consider AT is acting in bad faith in seeking to enforce the costs determination. Nor do I consider either the separate process Mr Prasad was involved in with AT or Mr Prasad's inability to access information held by Ms Thomson are relevant to AT's application for a compliance order. No evidence was provided to substantiate submissions from Mr Prasad that these matters were relevant to AT's compliance order application.

[17] Mr Prasad has not made any stay application in the Authority in relation to AT's application for a compliance order. I also accept AT's submission that declining to

make a compliance order could in effect undermine my earlier decision to decline to stay the proceedings which led to the costs determination.

[18] I do not consider Mr Prasad's de novo challenge to the substantive determination prevents a compliance order as to costs from being issued.<sup>6</sup> Finally, no evidence was provided to substantiate Mr Prasad's claimed inability to pay the amount awarded in the costs determination.

### **Compliance order**

[19] Within 28 days of the date of this determination Kamal (Billy) Prasad is ordered to comply with the costs determination and to pay Auckland Transport the sum of \$8,000 as a contribution to costs.

[20] There are very serious consequences where there is a failure to comply with a compliance order. Should Mr Prasad fail to comply with the compliance order made, AT is entitled to pursue the breach in the Employment Court or the District Court. AT have indicated in its submissions that it intends to apply to the Employment Court to exercise powers the Court has including to impose a fine not exceeding \$40,000 or order property to be sequestered.<sup>7</sup> Alternatively, a certificate of determination may be obtained from the Authority and enforcement obtained from the District Court.

### **Should an order of interest be made on the costs owing and an order for costs in relation to the application for a compliance order**

[21] AT also sought awards of interest under cl 11 of sch 2 of the Act on the orders under the costs determination from 17 May 2024, which was the date of that determination, and costs on its application for a compliance order of \$2,250 based on this matter being treated as involving the equivalent of half a day of investigation meeting time, plus reimbursement of the filing fee.

[22] Mr Prasad opposed both the applications for awards of interest and costs sought associated with this application for a compliance order, but submissions on his behalf did not address these points.

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<sup>6</sup> See the Court's judgment in *Cunningham v HealthAlliance NZ Ltd* [2025] NZEmpC 6, where an application for stay of execution of compliance orders was declined, where a stay of an application for stay of a costs determination had earlier also been declined by the Court in *Cunningham v HealthAlliance NZ Ltd* [2024] NZEmpC 58.

<sup>7</sup> Sections 139 and 140(6) of the Act.

[23] The Authority has the power to award interest calculated in accordance with schedule 2 of the Interest on Money Claims Act 2016 and the ability to award costs in relation to the application for a compliance order.

[24] I consider it appropriate to order interest be paid on the costs award from the date it was due, which was 28 days after 17 May 2024<sup>8</sup>, being 14 June 2024. AT has been without the use of the money due to it under the costs determination for a considerable period and Mr Prasad has made no attempt to make any payment or enter a payment arrangement in relation to the amounts awarded to AT.

[25] I also consider AT are entitled to a reasonable contribution to its costs in relation to this matter, which I fix at \$1,000, and reimbursement of the filing fee.

### **Summary of orders**

[26] I order that Kamal (Billy) Prasad within 28 days of the date of this determination:

- (a) comply with the costs determination and to pay Auckland Transport (AT) the sum of \$8,000 as a contribution to costs (the costs award);
- (b) calculate and pay AT interest on the costs award in accordance with the Interest on Money Claims Act 2016 from 14 June 2024 until the costs award has been paid in full, to be calculated using the civil debt calculator on the Ministry of Justice website;<sup>9</sup> and
- (c) pay costs on this application in the sum of \$1,000 together with reimbursement of the filing fee of \$71.55.

Shane Kinley  
Member of the Employment Relations Authority

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<sup>8</sup> Costs determination at [20].

<sup>9</sup> <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>.