

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 71
5444099

BETWEEN

SELWYN BETHUNE

Applicant

A N D

MICHAEL SHEFFIELD &
KARLIE SOLOMON t/a
ONE RED CHILLI

Respondents

Member of Authority: Anna Fitzgibbon

Representatives: Michael McFadden, Representative for Applicant
Respondents in person

Investigation Meeting: On the papers

Date of Determination: 03 March 2014

DETERMINATION OF THE AUTHORITY

Application for a compliance order

[1] On 21 November 2013 a Record of Settlement (the Settlement) was signed under s.149 of the Employment Relations Act 2000 (the Act). The parties to the Settlement were the applicant, Mr Selwyn Bethune, and the respondents, Mr Michael Sheffield and Ms Karlie Solomon trading as One Red Chilli. The Settlement was signed by Mr Bethune and by Mr Sheffield and Ms Solomon. The Settlement was also signed by a mediator employed by the Ministry of Business, Innovation and Employment (MBIE).

[2] The issue brought before the Authority by Mr Bethune is that Mr Sheffield and Ms Solomon have not complied with the Settlement as follows:

- In breach of clause 2 they have failed to provide a signed handwritten apology to Mr Bethune within seven days of the Settlement which was to include “*an apology for the dismissal, failure to pay wages and the negative impact on Selwyn and his family. ... A withdrawal of this dismissal and confirm that the matter has now been fully resolved.*”
- In breach of clause 3 they have failed to provide evidence that they have used “*their best endeavours to locate personal property belonging to Selwyn Bethune that includes a rose-handled paring knife, 2 ceramic bowls and a pair of Swiss Birchwood clogs*”.
- In breach of clause 4 they have failed to make payment to Mr Bethune of the compensatory sum of \$3,000 pursuant to s.123(1)(c)(i) of the Act and,
- In breach of clause 5 they have failed to make a contribution to Mr Bethune’s legal costs of \$4,000 plus GST.

[3] The Settlement was certified under s.149 of the Act by the mediator. That certification confirmed that before signing the agreement, the parties were advised, and accepted, they understood the effect of s.149(3) which states that the agreed terms of settlement:

(a) were final, binding and enforceable; and

(b) could not be cancelled; and

(c) could not be brought before the Authority or the Court for review or appeal, except for the purposes of enforcing those terms.

[4] On 20 December 2013, an application for a compliance order was filed in the Authority by Mr Bethune seeking compliance by Mr Sheffield and Ms Solomon with the Settlement and seeking further costs.

[5] Mr Sheffield and Ms Solomon filed a statement in reply on 28 January 2014 stating that they do not object to the orders sought by Mr Bethune but say the recent breakup of their relationship and their dire financial circumstances are the reasons for their non-compliance.

[6] I am satisfied Mr Sheffield and Ms Solomon have not complied with the terms of the Settlement.

Determination

[7] I make the following orders that Mr Sheffield and Ms Solomon are to:

- provide Mr Bethune with an apology in terms of clause 2 of the Settlement,
- provide evidence that they have used their best endeavours to locate Mr Bethune's personal property in accordance with clause 3 of the Settlement,
- pay Mr Bethune the compensatory sum of \$3,000 in accordance with clause 4 of the Settlement. Taking into account Mr Sheffield and Ms Solomon's financial circumstances, this amount is to be paid by instalments of \$1,000 per month on the 20 March 2014, 20 April 2014 and 20 May 2014,
- pay Mr Bethune's legal fees of \$4,000 plus GST (\$4,600) to Dean J Organ & Associates Limited by making payments of \$500 per month commencing on 20 March 2014 and on the 20th day of each consecutive month until the \$4,600 is paid.

[8] The apology and the evidence confirming best endeavours to locate personal property are to be sent to Mr Bethune care of Michael McFadden at Dean J Organ & Associates Limited within 7 days of the date of this determination.

Costs

[9] Given Mr Sheffield and Ms Solomon's financial circumstances, I do not propose to make an order as to costs. However, Mr Sheffield and Ms Solomon are to reimburse Mr Bethune directly the Authority's \$71.56 filing fee within 7 days of the date of this determination.

[10] I also direct that pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000, Mr Bethune be provided with a Certificate of Determination, sealed with the seal of the Authority, recording respectively that Mr Sheffield and Ms Solomon are ordered to pay Mr Bethune directly the sum of \$3,000

pursuant to s.123(1)(c)(i) of the Act in instalments as above; legal fees of \$4,600 (inclusive of GST) by instalments as above directly to Dean J Organ & Associates Limited and the filing fee of \$71.56 to Mr Bethune directly within 7 days of the date of this determination.

Anna Fitzgibbon
Member of the Employment Relations Authority