

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 52/08
5111310

BETWEEN

LEEANNE BOYER
Applicant

AND

WAYNE MONASTRA t/a
STROMBOLI RESTAURANT
AND WINE BAR
Respondent

Member of Authority: Helen Doyle

Representatives: Rob Davidson, Counsel for Applicant
No representation for Respondent

Investigation Meeting: 29 April 2008 at Christchurch

Determination: 1 May 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Ms Leeanne Boyer, has applied to the Authority for an order that the respondent comply with the terms of the settlement entered into by the parties under s149 of the Employment Relations Act 2000 on 30 August 2007. Ms Boyer also seeks a penalty under s149 (4) of the Employment Relations Act 2000 for a breach of the terms of the settlement agreement and costs.

[2] Mr Monastra did not lodge a statement in reply with the Authority but did attend a telephone conference on 26 February 2008 with the Authority and counsel for Ms Boyer, Mr Davidson.

[3] Mr Monastra did not dispute during the telephone conference that he owed Ms Boyer the monies claimed. He said he had not made the payments in accordance with the settlement agreement because of a lack of funds to do so. Mr Monastra did

confirm during the telephone conference that he would commence weekly payments. It was agreed during the telephone conference that the Authority would conduct an investigation meeting if necessary on 29 April 2008. I am satisfied that both parties were served with a copy of the Notice of Direction and Notice of Investigation Meeting.

[4] On the day of the investigation meeting there was no appearance by Mr Monastra. I delayed the start of the meeting for approximately 15 minutes and had an Authority Support Officer attempt to contact Mr Monastra on his cell phone and on the restaurant telephone number. Contact was not able to be made. I decided to proceed to hear evidence from Ms Boyer in the absence of any good reason for the failure by Mr Monastra to attend.

[5] Ms Boyer commenced her employment with Mr Monastra as a restaurant manager of the Stromboli Restaurant and Wine Bar in or about March 2007.

[6] On 30 August 2007 Ms Boyer entered into a settlement agreement under s149 of the Employment Relations Act 2000. The parties to the settlement agreement were Leanne Boyer and Stromboli Restaurant and Wine Bar. Mr Monastra signed the settlement agreement. I am satisfied after hearing evidence from Ms Boyer that Mr Monastra owns and operates the restaurant.

[7] The record of settlement contained amongst others the following terms:

3. *The Employer agrees to pay the Employee, on a without prejudice and denial of liability basis, the sum of \$3,000 pursuant to s123(1)(c)(i) Employment Relations Act 2000.*
4. *The above amount will be paid to the Employee in 6 instalments of \$500 each, by way of postdated cheques for the following dates:*
 - a) *\$500, within 7 days of the date of this agreement*
 - b) *\$500 dated 14 days after the date of the first cheque*
 - c) *\$500 dated 14 days after the date of the second cheque*
 - d) *\$500 dated 14 days after the date of the third cheque*
 - e) *\$500 dated 14 days after the date of the fourth cheque*
 - f) *\$500 dated 14 days after the date of the fifth cheque*

5. *Should the employer default on any of the above payments then the entire amount becomes payable and enforceable forthwith.*

[8] I am satisfied in terms of clause 4 of the record of settlement that Ms Boyer only received two payments of \$500. These payments were received prior to 18 September 2007. A cheque after that date was dishonoured. Ms Boyer confirmed that she has received no further payments.

[9] The Authority is satisfied that Mr Monastra has failed to comply with clause 4 of the Record of Settlement and that the non-compliance continues in that there is an amount due and owing to Ms Boyer in the sum of \$2,000. Under clause 5 of the Record of Settlement any default on the payments set out in clause 4 results in the entire amount becoming payable and enforceable forthwith. It is appropriate that a compliance order be made.

[10] I order Wayne Monastra trading as Stromboli Restaurant and Wine Bar to pay to Leeanne Boyer the sum of \$2,000 within 14 days of the date of this determination.

Penalty

[11] Mr Monastra has at various times said that financial difficulties were the reason for non-payment of the agreed amounts. He has failed to pay any amount whatsoever in reduction of the sum owing to Ms Boyer from October 2007. Mr Monastra indicated during a telephone conference with the Authority that he would make some payments toward the amount owing but has again failed to do so.

[12] I am of the view that a penalty is warranted in this particular case. Mr Monastra entered into a settlement of an employment relationship problem with Ms Boyer and it has not been honoured.

[13] I order Wayne Monastra trading as Stromboli Restaurant and Wine Bar to pay the sum of \$500 as a penalty. Under s136 of the Employment Relations Act 2000 Mr Monastra is to pay \$400 to Leeanne Boyer and the remaining \$100 is to be paid into the Authority which sum will be paid by the Authority into the Crown bank account.

Costs

[14] Mr Davidson indicated that Ms Boyer's actual costs on the application for compliance and penalty would be \$1,500 plus GST and a filing fee.

[15] I am of the view that a suitable award for costs in this matter would be the sum of \$800 together with disbursements in the sum of \$70.00 being the filing fee.

[16] I order Wayne Monastra trading as Stromboli Restaurant and Wine Bar to pay to Leeanne Boyer the sum of \$870.00 being costs and disbursements.

Summary of orders made

- Wayne Monastra trading as Stromboli Restaurant and Wine Bar is ordered to comply with clause 4 of the Record of Settlement and pay Leeanne Boyer the sum of \$2,000 within 14 days of the date of this determination;
- Wayne Monastra trading as Stromboli Restaurant and Wine Bar is ordered to pay the sum of \$500 as a penalty. \$400 of that penalty is to be paid to Leeanne Boyer and the remaining \$100 into the Authority which will then be paid by the Authority into the Crown bank account;
- Wayne Monastra trading as Stromboli Restaurant and Wine Bar is ordered to pay costs and disbursements in the sum of \$870 to Leeanne Boyer.

Helen Doyle
Member of the Employment Relations Authority