

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 224
3133697

BETWEEN

MICHELLE BRADLEY
Applicant

AND

HOOF CAMP SADDLERY
LIMITED
Respondent

Member of Authority: Eleanor Robinson
Representatives: Gerard Elwell, counsel for Applicant
David Fraundorfer, counsel for Respondent
Investigation Meeting On the papers
Determination: 25 May 2021

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] The Applicant, Ms Michelle Bradley, has applied to the Authority under s 137 of the Employment Relations Act 2000 (the Act) for an order requiring the Respondent, Hoof Camp Saddlery Limited (Hoof Camp), to comply with the terms of the determination given by the Authority (Determination [2020] NZERA 468).

[2] In Determination [2020] NZERA 468 which was issued on 13 November 2020, the Authority ordered Hoof Camp to pay Ms Bradley the sum of \$15,000.00 as compensation for humiliation, loss of dignity and injury to her feelings under s 123(1)(c)(i) of the Act.

[3] On 3 March 2021 Ms Bradley applied to the Authority for a Compliance Order, claiming that Hoof Camp has not paid her any of the monies to which she was entitled under the determination.

[4] Hoof Camp asserts that it is not in a position to comply with the Authority's determination.

Submissions of the Applicant

[5] It is submitted for Ms Bradley that there has been a radical change in Hoof Camp's financial position from the financial year ended 31 March 2020, moving from a position of \$50,383.00 in total assets and \$24,842.00 of net assets to a loss in the balance sheet ended 31 March 2021 of \$35,921.00 in net assets.

[6] It is submitted that there may have been tortious misconduct by Hoof Camp in regard to the financial management of the company in order to avoid meeting its obligation to pay Ms Bradley the amount ordered by the Authority.

[7] It is also submitted that the Applicant may be able to provide evidence that the sole director of Hoof Camp is continuing to do business in the same geographical area selling similar equine products.

[8] The Applicant further seeks to have the sole director of Hoof Camp, Ms Kathryn Cook, added as a second respondent.

Submissions of the Respondent

[9] Hoof Camp submits that as evidenced by the financial evidence which it has filed with the Authority, it is unable to comply with Determination [2020] NZERA 468.

[10] It also submits that Ms Cook's health means that she is unable to work. In relation to the selling of equine products it submits that Ms Cook has sold some personal and second hand products online, but this conduct is not attributable to Hoof Camp. Further that the stock Ms Cook was forced to purchase from Hoof Camp is predominantly out of style or date such that it no longer holds any value and trading them would be of minimal benefit.

[11] It is submitted that following the issuing of Determination [2020] NZERA 468 Hoof Camp has maintained full transparency with the Applicant, advising it that its best course would be to make a statutory demand.

[12] It is further submitted that the Authority could consider making an order of compliance by instalments.

Compliance Order

[13] In respect of the application for joinder, Determination [2020] NZERA 468 determined that Hoof Camp was the correct respondent and I see no grounds for altering that finding.

[14] I note the submission of the Applicant as to the possibility of tortious misconduct by Ms Cook, however there is no evidence before me to substantiate that submission, and moreover it may properly fall outside of the Authority's jurisdiction.

[15] Turning to the question of compliance, in accordance with s 138(4) of the Act, a compliance order issued by the Authority:

(4) (a) May be made subject to such terms and conditions as the Authority thinks fit ...

(4A) If the compliance order relates in whole or in part to the payment to an employee of a sum of money, the Authority may order payment to the employee by instalments, but only if the financial position of the employer requires it.

[16] I am satisfied that this is a case in which payment to Ms Bradley should be made in instalments on the basis of the financial evidence submitted by the respondent. I also note the medical evidence relating to Ms Cook, and the fact that Hoof Camp was recently in the process of being removed from the Companies Office register which process has only been halted in order that this matter may be determined.

[17] In the circumstances I make the following order for compliance by instalments:

[18] **Hoof Camp is ordered to pay Ms Bradley the following amounts in order to comply with Determination [2020] NZERA 468:**

- i. The sum of \$3,000.00 to be paid within 14 days of the date of this determination;**
- ii. The sum of \$3,000.00 to be paid by 30 June 2021;**
- iii. The sum of \$3,000.00 to be paid by 30 July 2021;**
- iv. The sum of \$3,000.00 to be paid by 27 August 2021; and**
- v. The final instalment of \$3,000.00 to be paid by 30 September 2021.**

[19] **Interest is ordered to be paid on the outstanding amounts in accordance with the Ministry of Justice Civil Debt Interest Calculator.**

Filing Fee

[20] **Hoof Camp is also ordered to pay Ms Bradley the filing fee of \$71.56 within 14 days of the date of this Determination.**

Costs

[21] Ms Bradley has applied for costs.

[22] Costs are at the discretion of the Authority. The principles applicable to awards of costs in the Authority are well established. It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*¹ that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*² at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

[23] The matter was considered on the papers with no investigation meeting taking place, and I take this into consideration in assessing costs.

[24] **Accordingly, Hoof Camp is ordered to pay to Ms Bradley the sum of \$750.00 as a contribution towards costs within 14 days of the date of this Determination.**

Eleanor Robinson
Member of the Employment Relations Authority

¹ [2005] 1 ERNZ 808

² [2001] ERNZ 305