

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 128  
5449627

BETWEEN CHANELLE BRYAN  
Applicant

A N D STEPHEN JOHN RYAN  
First Respondent

A N D JOANNA WILSON  
Second Respondent

Member of Authority: Rachel Larmer

Representatives: Michael Smyth, Counsel for Applicant

Investigation Meeting: 04 April 2014

Date of Determination: 04 April 2014

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**DETERMINATION OF THE AUTHORITY**

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**A. Joanna Wilson is ordered to comply with the Authority's determination dated 19 December 2013 within 28 days of this determination by paying Ms Bryan:**

- a. \$5,288.23 wage arrears;**
- b. \$575.18 interest from 19 December 2013 until today on the wage arrears;**
- c. \$15,000 penalty.**

**B. Joanna Wilson is ordered to comply with the Authority's costs determination dated 18 February 2014 within 28 days by paying Ms Bryan;**

a. **\$5,500 legal costs;**

b. **\$153 for disbursements.**

C. **Joanna Wilson is ordered to pay Ms Bryan within 28 days of this determination \$100 towards Ms Bryan's legal costs on this compliance application together with \$71.56 to reimburse her filing fee.**

## **Employment relationship problem**

[1] The Authority has issued two determinations which involve these parties. The first was a substantive determination dated 19 December 2013.<sup>1</sup> The second was a costs determination dated 18 February 2014.<sup>2</sup>

[2] Ms Bryan has applied for compliance orders against Mr Ryan and Ms Wilson in respect of both determinations. Neither Mr Ryan nor Ms Wilson have filed Statements in Reply nor have either of them sought leave to file a Statement in Reply out of time.

### **Mr Ryan**

[3] Mr Ryan has challenged both Authority determinations. These challenges are currently before the Court. Mr Ryan also successfully applied to the Court for an interim stay which was granted on an urgent basis pending the Court's hearing of the substantive stay application on 15 May 2014.

[4] This compliance application before the Authority as it relates to Mr Ryan is accordingly adjourned sine die. The parties are directed to advise the Authority of the outcome of the Employment Court stay application hearing on 15 April 2014.

### **Ms Wilson**

[5] Ms Wilson first contacted the Authority about this matter at 4.58pm yesterday. Ms Wilson advised the Authority that she would not be attending the Authority's investigation due to illness because she was having medical test. Attached to her email was a medical certificate dated 31 March 2014 which certified she was "*unfit to resume work for a period of 7 days from 31/03/14.*"

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<sup>1</sup> [2013] NZERA Auckland 584

<sup>2</sup> [2014] NZERA Auckland 57.

[6] The Authority treated this communication as a request for an adjournment of its investigation meeting today. It declined to adjourn the matter because Ms Wilson had not filed a Statement in Reply, she has not sought leave to file a Statement in Reply out of time, there was no evidence she had medical tests today, and there was no explanation as to why the request for an adjournment was filed so late.

[7] I am satisfied that Ms Wilson was served with the Statement of Problem in respect of this matter on 01 March 2014 and was served with the Notice of Investigation Meeting (for today's meeting) on 16 March 2014. The Authority held its investigation meeting today as scheduled and Ms Bryan and her counsel Mr Smyth both appeared in person.

[8] Subsequent to the conclusion of the investigation meeting Ms Wilson emailed the Authority with further information saying she was unwell so could not attend the investigation meeting today. Ms Wilson provided a radiology referral and a receipt from a medical centre dated yesterday but this did not specify a date for her appointment which she says was today.

[9] Ms Wilson has not provided the Authority with any information in respect of these compliance applications. The matter is therefore determined based on the information which has been filed with the Authority by Ms Bryan which I am satisfied has also all been served on Ms Wilson.

### **Ms Bryan**

[10] Ms Bryan says she has attempted to recover the amounts she was awarded by the Authority in the substantive and costs determinations from Ms Wilson but has not received any response. She believes she will not be paid by Ms Wilson unless a compliance order is made. There is no evidence to suggest the contrary.

[11] Mr Smyth says that the interest which has accrued from 19 December 2013 being the date of the substantive determination to the date of today's investigation on the wage arrears awarded to Ms Bryan is \$575.18

### **Outcome**

[12] I am satisfied that compliance orders should be issued against Ms Wilson. Accordingly Ms Wilson is ordered within 28 days of this determination to comply with the Authority's substantive determination dated 19 December 2013 and its costs determination dated 18 February 2014 by paying Ms Bryan;

- a. \$5,288.23 wage arrears;
- b. \$575.18 interest from 19 December 2013 until today on the wage arrears;
- c. \$15,000 penalty;
- d. \$5,500 costs;
- e. \$153 disbursements.

### **Costs**

[13] Ms Bryan as the successful party is entitled to a contribution towards her actual costs on this application. Ms Wilson is ordered to pay Ms Bryan \$100 towards her actual costs for this compliance application together with \$71.56 to reimburse her filing fee.

**Rachel Larmer**  
**Member of the Employment Relations Authority**