

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 80
5417379

BETWEEN EMMA BURLING
 Applicant

AND VETSTA LTD T/A
 SUCCESSION FIRST
 Respondent

Member of Authority: P R Stapp

Representatives: Bede Laracy Advocate for Applicant
 Robbie Schneider for Respondent

Investigation Meeting: On the papers and by telephone conferences (14 May
 and 5 July 2013)

Determination: 9 July 2013

COSTS DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] There remains an outstanding issue in regard to costs between the parties.

The facts

[2] The employment relationship problem arose out of a record of settlement signed off by a mediator, and dated 8 April 2013.

[3] The respondent delayed payment of an agreed sum due in seven days of the signing of the settlement, and the applicant filed a statement of problem in the Authority to obtain payments owing under the settlement. The respondent had not provided a reference for the applicant.

[4] The application applied for enforcement of the record of settlement by compliance, interest on the sum owing, that the respondent provide the reference, penalties and the recovery of costs including the filing fee.

[5] The applicant also sought to join Mr Schneider personally to the application.

[6] The respondent filed a statement in reply on 29 April 2013 and explained that the company could not pay the sum owed in the time that had been agreed, but payments would be made as the business was able to do so.

[7] At a telephone conference held on 14 May 2013 Mr Schneider confirmed that some money had been paid and Mr Laracy agreed to check this with his client. Mr Schneider agreed to pay the outstanding amount as soon as possible from then.

[8] Confirmation has been received from 4 July 2013 that the respondent has made the payments that it undertook to pay by the end of June. All that remains is an issue about the costs.

[9] The applicant is seeking \$1,100 plus GST and the filing fee for having to come to the Authority. The respondent has denied the sum claimed.

Determination

[10] The matter of costs in this instance should be that they lie where they fall, except for the filing fee. My reasons for this decision are:

- i. That it seemed to me at the time that a direction to mediation would not contribute constructively to resolve the problem since both parties had engaged with the mediator once the problem occurred. There was no resolution to the timeframe for payments between the parties and the mediator.
- ii. That the Authority's role was only as an intervener and facilitator to help both parties.
- iii. That both parties have benefitted from the Authority's intervention. Arrangements for delayed payments occurred during the Authority's first

telephone conference, and the applicant has received the payments and reference.

- iv. That the respondent has paid the outstanding money and that there was no deliberate default by the respondent in making the payments after mediation, except to decide differently on the time to make the payments contrary to the terms of the mediator's record. It does seem that the business had some difficulties and the time frame was not suitable, but that does not excuse a party changing terms of settlement after they have been signed off.
- v. That there was no investigation meeting in the Authority required. However at the first telephone conference nothing was required of the Authority and no arrangements were needed for an investigation meeting including preparation, a fixture and timetabling witness statements and documents.
- vi. That mutual agreement was reached on payments being achieved and that has happened.
- vii. That this was not a complex matter and should not have involved a great deal of input for filling out the statement of problem and working with the Authority to get the result without an investigation meeting.
- viii. That any costs have to be assessed on the basis of the notional daily tariff. I accept that the applicant has engaged a representative whom she presumably has to pay. I am not sure what the arrangements for the costs are and what the details of the costs have been except for the representative's time and filling out the statement of problem and putting on the annexures. There are no invoices and details provided.
- ix. That such costs have not involved any investigation meeting it goes without saying that the parties must bear their own costs for the preliminary activity involved.

[11] All remaining claims in the statement of problem have been waived.

[12] There is a right of the applicant to enforce her entitlements without undue costs, the sanctity of a mediated record of settlement and not having to incur costs for

needing to come before the Authority to get entitlements. On the other hand I also have to balance the desirability of getting parties to resolve their problems without an investigation meeting where it is appropriate. This was one of those cases and like many that settle beforehand involve no orders for costs when nothing has been done to conduct an investigation meeting.

[13] Therefore costs are to lie where they fall, except that Vesta Ltd t/a Succession First is to pay Emma Burling the filing fee of \$71.56. This is because there was a result in her favour that might have taken more time for the applicant to get her money and reference without the Authority's involvement and the statement of problem being filed.

Orders of the Authority

[14] Vesta Ltd t/a Succession First is to pay Emma Burling the filing fee of \$71.56.

P R Stapp

Member of the Employment Relations Authority