

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 499
3301020

BETWEEN

CELINA CALDEIRA
Applicant

AND

LCNZ PONSONBY PTY
LIMITED
Respondent

Member of Authority: Sarah Blick

Representatives: May Moncur, advocate for the applicant
Gordon Frykberg, for the respondent

Investigation Meeting: On the papers

Information and submissions received: 9 July and 14 August 2024 from the applicant
21 July and 15 August 2024 from the respondent

Determination: 20 August 2024

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Celina Caldeira seeks a compliance order with a determination of the Authority dated 2 May 2024 in which awards were made in her favour.¹ She also seeks costs in relation to this application.

[2] LCNZ Ponsonby PTY Limited (LCNZ) indicated it opposed the compliance order sought in its statement in reply to this application, stating it had filed a challenge of the determination in the Employment Court.

¹ *Caldeira v LCNZ Ponsonby PTY Limited* [2024] NZERA 255.

The Authority's investigation

[3] By consent this matter is determined on the papers. Ms Caldeira lodged an affidavit and submissions dated 7 July 2024 in support of her application, and LCNZ's director Gordon Frykberg has provided an affirmation dated 16 July 2024. The parties have also since provided further information by email.

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Issues

[5] The issues for determination are whether a compliance order should be issued and costs awarded in relation to this application.

The parties' positions

[6] Ms Caldeira's affidavit states at the time of swearing she had not received any payment from LCNZ of the awards made in her favour in the determination being:

- (a) \$20,000 compensation under s 123(1)(c)(i);
- (b) \$2,250 costs award; and
- (c) \$71.55 Authority application fee.

[7] These payments were due within 21 days of the date of the determination. Ms Caldeira says her bank account details were provided to LCNZ within a few days of the determination, on 7 May 2024.

[8] Ms Caldeira says LCNZ has not applied for a stay of execution of the awards in the Authority or Employment Court. LCNZ appears to have initially assumed it had an automatic right of stay by challenging the determination.

[9] LCNZ did not provide submissions but provided an affirmation which appears to have been intended for filing in the Employment Court. LCNZ stated it was unable to make a lump sum payment but is "happy to commence instalments immediately" of \$2,000 a month.

[10] In response to LCNZ's instalment proposal, Ms Caldeira states had LCNZ initially proposed that arrangement in good faith, she would not have been compelled to lodge a compliance order application with the Authority.

[11] On 15 August 2024, LCNZ advised by email that it had made Ms Caldeira aware of the proposal to commence instalments and the first instalment was made last month in good faith, with the second to be made shortly. It further says that, combined with the fact the challenge is based on clear evidence the Authority determination is wrong, its actions demonstrate it is acting in good faith. LCNZ says it remains committed to its instalment offer and says financially it cannot do more without compromising its ability to pay its employees.

Discussion

[12] A challenge to an Authority determination to the Employment Court does not operate as a stay: s 180 of the Act. An application for a stay is the statutory mechanism available to consider how, in the face of a challenge, justice may be done between the parties in respect of awards.

[13] LCNZ has not applied for a stay to the Authority nor, I am advised, to the Court. The effect of declining the compliance order would be to grant a de facto stay which could be seen as undesirable, and arguably undermines the statutory processes in place to deal with issues of this nature particularly given how a stay may be crafted in ways which are not possible when declining a compliance order for example an order for payment into court.

[14] LCNZ has provided no financial information to the Authority in relation to its financial position sufficient to justify an order for instalment payments.

[15] Having considered and weighed the relevant factors, I find it is appropriate to exercise my discretion under s 137(1)(b) of the Act to order compliance with the awards contained in the determination.

Outcome

[16] Within 14 days of the date of this determination LCNZ Ponsonby PTY Limited must comply with the determination *Caldeira v LCNZ Ponsonby PTY Limited* [2024] NZERA 255 and pay Celina Caldeira the awards made in her favour.

[17] If the parties do wish to enter into an arrangement between themselves allowing payment by instalment of the Authority's awards without the need for a stay or further enforcement proceedings, they may do so by agreement. In the meantime, the awards are payable in full pursuant to this compliance order.

Costs

[18] Ms Caldeira seeks costs in relation to this application based on a quarter of the daily tariff of \$4,500. Given the nature of this application and the fact it was heard on the papers, I award \$600 in costs. It is also appropriate to award the Authority application fee of \$71.55. LCNZ is therefore ordered to pay \$671.55 to Ms Caldeira within 14 days of the date of this determination.

Sarah Blick
Member of the Employment Relations Authority