

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2014] NZERA Christchurch 174
5411907

BETWEEN LYNLEY MAY CARRINGTON
Applicant

A N D TAYSIDE SPRINGS LIMITED
Respondent

Member of Authority: David Appleton

Representatives: Lyn Carrington in person
Manav Soni, representative for the Respondent

Submissions Received: 20 October 2014 from Respondent
3 November 2014 from Applicant

Date of Determination: 4 November 2014

DETERMINATION OF THE AUTHORITY (No 2)

The respondent's application for payment by instalments of the sums previously ordered by the Authority to be paid to the applicant is refused. The orders previously made are varied so that all sums due are to be paid by no later than 31 December 2014.

[1] Pursuant to a determination dated 1 October 2014¹, the Authority ordered the respondent to pay to Ms Carrington remedies and costs totalling \$16,812.56.

[2] On 20 October 2014 the Authority received an application from the respondent effectively seeking a variation of the Authority's orders so that payment could be made to Ms Carrington in weekly instalments of \$500.

¹ [2014] NZERA Christchurch 152

[3] Mr Soni, on behalf of the respondent, swore an affidavit which stated that the respondent was under a lot of financial stress due to a severe shortage of operating funds. Mr Soni referred to rental arrears of \$88,122 owed by the company, but which was intended to be paid in full by 20 November 2014. He states that, *when the current crisis has passed the company will be in a stronger financial position*. He also annexes a statement for a Sharvin Lodge, the relevance of which is unclear.

[4] Ms Carrington has lodged and served a reply which effectively takes issue with the accuracy of the contents of Mr Soni's affidavit, and which states that she herself is in financial need.

[5] Section 123(2) of the Employment Relations Act 2000 provides:

When making an order under subsection (1)(b) or (c), the Authority or the court may order payment to the employee by instalments, but only if the financial position of the employer requires it.

[6] First, I am satisfied that I am able to consider an application for payment by instalments after the Authority's substantive determination has been issued and orders under s123(1)(b) and (c) made. *Benge v Canterbury Language College Ltd* [2012] NZERA Christchurch 232.

[7] The Authority may only order payment by instalments under s123(2) where the financial position of the employer requires it. This indicates that the Authority must be satisfied, on balance, that the party ordered to make payments under s123(1)(b) and/or (c) cannot comply with the order(s) unless it pays by instalments.

[8] Mr Soni has not produced anything like enough information to support his contention that the respondent cannot comply with the order(s) made in the 1 October 2014 determination unless it pays by instalments of \$500 a week. Whilst I accept that money is likely to be tight in the immediate short term because of the respondent's commitment to the landlord, there is no indication that this is likely to continue over the next 34 weeks, which is how long it would take the respondent to pay off the sums ordered to be paid at \$500 a week (assuming no payments have been made to date).

[9] Mr Soni has not produced any evidence of the projected income and outgoings of the company over this period. He has also not produced any evidence of the respondent's assets.

[10] In summary, I am unable to satisfy myself from the evidence produced that the financial position of the respondent requires payment to be made by instalments. I acknowledge that the respondent may not be able to pay the \$16,812.56 that was ordered before the end of November 2014 due to its commitment to its landlord. Accordingly, I vary the orders made in the 1 October 2014 determination as follows:

[11] By no later than 31 December 2014 the respondent must pay to Ms Carrington the following:

- a. The gross sum of \$1,441 in respect of lost wages arising out of the unjustified disadvantage she suffered, awarded under s123(1)(b) of the Act;
- b. The further gross sum of \$7,800 in respect of lost wages arising out of the unjustified constructive dismissal, awarded under s123(1)(b) of the Act;
- c. The sum of \$7,500 awarded under s123(1)(c)(i) of the Act, for compensation for humiliation, loss of dignity and injury to her feelings; and
- d. The sum of \$71.56 in respect of the Authority's lodgement fee incurred by Ms Carrington.

David Appleton
Member of the Employment Relations Authority