

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 357
3041392

BETWEEN

VERITY CHICK

Applicant

AND

QUINTEN HENDERSON

Respondent

Member of Authority: Robin Arthur
Representatives: Applicant in person
Respondent in person
Investigation: On the papers
Determination: 19 November 2018

DETERMINATION OF THE AUTHORITY

- A. By no later than Monday, 26 November 2018 Quinten Henderson must pay Verity Chick the full sum due under their certified settlement agreement.**
- B. Also by 26 November 2018 Mr Henderson must reimburse Ms Chick the fee of \$71.56 she paid to lodge her application in the Authority.**
- C. Leave is reserved for Ms Chick to revert to the Authority for further orders, including an application for penalties, if the payment due is not made within the required time.**

Employment Relationship Problem

[1] Verity Chick applied to the Authority for a compliance order because Quinten Henderson had not paid her amounts due under a settlement agreement they made on 16 July 2018. The agreement was reached with the assistance of a Ministry of Business employment mediator and certified by the mediator under s 149 of the

Employment Relations Act 2000 (the Act). The effect of certification is that the agreed terms are final, binding and enforceable. A person who breaches an agreed term of such a certified settlement is liable to a penalty imposed by the Authority, which in the case of an individual may be up to \$10,000.¹

[2] The agreement required Mr Henderson to pay a certain amount of money in two instalments, the last by 20 September 2018. He made neither payment.

[3] After the date that the first instalment was due Ms Chick sent Mr Henderson an email noting he had not paid the agreed amount by the set date. He replied saying he needed to telephone Ms Chick. She replied that he did not need to ring her and that if she did not receive the amount due she would contact the Employment Relations Authority. He replied that he was “not paying it” and again demanded a phone number on which he could contact her.

[4] He then sent the following email (amounts redacted) under the subject ‘Money’:

I’ve changed my mind because of your abrupt behaviour. You lost your \$[...] by not talking with me like I asked and by being abrupt and a bully in these emails. All I wanted was to pay this month after I get the money on Wednesday and the same again with the \$[...] next month. I can’t get money out of fresh air. I may not even turn up at the ERA when you’ve got a date there. You don’t deserve my time or my money. We were on the home stretch and you WERE getting \$[...] dollars but you have just ruined that. Good luck for the future.

[5] Mr Henderson has not replied to Ms Chick’s application for a compliance order or to a Minute of the Authority sent to him on 9 November. Both documents were delivered by courier to an address for which he had given the courier firm authority to deliver and were also sent to the email address he used in correspondence with Ms Chick. The Minute explained the procedure the Authority would follow in the absence of any response from Mr Henderson. It gave him a further opportunity to either pay the amount due (and to advise the Authority he had done so) or to provide any explanation he may have in writing by 12 noon on 16 November 2018. He has not responded or advised the amount due has been paid. Accordingly this determination has taken the steps the Minute advised would be taken.

¹ Employment Relations Act 2000, s 149(3) and s 135(2).

[6] Mr Henderson has breached a term of a certified settlement agreement. He had no right to demand Ms Chick telephone him before receiving payment and she was under no obligation to talk to him or to agree any alteration in the terms that he may have sought. The order for compliance sought by Ms Chick had to be made. By no later than 26 November 2018 Mr Henderson must pay Ms Chick the full amount due under their settlement agreement and reimburse the fee she paid to lodge her application in the Authority.

[7] In the event Mr Henderson does not comply with this order, leave is reserved for Ms Chick to amend her application to seek a penalty under s 149(3) of the Act for breach of an agreed term of settlement.

[8] Many thousands of employment relationship problems are settled each year under an agreement certified under s 149 of the Act. The certification process includes the mediator explaining that the terms are final, binding, enforceable and cannot be cancelled. Substantial penalties may be imposed to deter and punish parties from breaching such terms.

[9] If it became necessary to impose a penalty in this case, some or all of it would probably be awarded to Ms Chick. She would then be able to enforce payment of that amount as well as the settlement sum due to her by lodging both the settlement agreement and the Authority's determination in the District Court.² The likely sum of such a penalty would make it cost effective to do so.

Robin Arthur
Member of the Employment Relations Authority

² Employment Relations Act 2000, s 141 and s 151(2)(b)(ii).