

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2023] NZERA 238  
3210779

BETWEEN                      GARY COTTON  
Applicant

AND                              DARCEE GOSLING  
Respondent

Member of Authority:        Helen Doyle

Representatives:             Lawrence Anderson, advocate for the Applicant  
Darcee Gosling in person

Investigation Meeting:       28 April 2023 by audio visual

Submissions Received:       On the day

Date of Determination:      11 May 2023

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Gary Cotton seeks compliance with two determinations of the Authority in which awards were made in his favour together with payment of interest and costs. A claim for penalties was withdrawn.<sup>1</sup>

[2] Mr Gosling did not lodge a statement in reply but he participated at a case management conference with the Authority on 20 March 2023 and attended the investigation meeting which was conducted by way of a Teams meeting.

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<sup>1</sup> *Cotton v Gosling, Gosling Solutions Limited and Ralston* [2022] NZERA 90 and *Cotton v Gosling* [2022] NZERA 139.

[3] Mr Gosling accepts that payments have not been made to Mr Cotton in accordance with the determinations. He continues to be unhappy with the outcome and says that whilst found by the Authority to be the employer he does not accept that he was in fact the employer and says that Mr Cotton was employed by his friend. Further that he is not in a financial position to make the payments.

### **The issues**

[4] The Authority needs to determine the following issues:

- (a) What orders were made by the Authority in its determinations?
- (b) Has there been compliance with the orders made in the determinations?
- (c) Should there be an order for compliance?
- (d) If an order for compliance is made, should there be interest awarded on the amounts payable?
- (e) Should there be an award of costs?

### **What orders has the Authority made in its determinations?**

[5] In a determination dated 16 March 2022, Mr Gosling was found to be the employer and findings were made that Mr Cotton had been unjustifiably dismissed and disadvantaged. The following awards were made:

- (a) \$10,010 gross being reimbursement of lost wages;
- (b) \$830.45 being arrears of wages;
- (c) \$131.12 gross being unpaid holiday pay; and
- (d) \$8,000 compensation without deduction.

[6] In a subsequent costs determination dated 12 April 2022 Mr Gosling was ordered to pay to Mr Cotton the sum of \$2,250 as a contribution towards his legal costs together with the filing fee of \$71.56.

[7] Mr Gosling did not challenge either determination.

**Has there been compliance with the orders made in the determinations?**

[8] Mr Gosling accepts that he has not complied with payment of the monetary orders in the determinations. There has not been compliance with the determinations.

**Should there be an order for compliance?**

[9] The power of the Authority to order compliance with determinations is found in s 137 (1)(b) of the Employment Relations Act 2000 (the Act).

[10] The discretion by the Authority whether to exercise its power to make a compliance order must be exercised in a principled way.

[11] It was evident to the Authority at the investigation meeting that Mr Gosling was dissatisfied by the findings made that he was the employer and about the findings and awards that flowed from that. There were options available to him. Both determinations were issued over a year ago. Mr Gosling has taken no steps to challenge them.

[12] I am not persuaded the Authority should exercise its discretion and refuse to make an order for compliance because of Mr Gosling's dissatisfaction with the determinations.

[13] Mr Gosling said in his oral evidence to the Authority that he was in receipt of a benefit and unable to pay the amounts ordered. It was not accepted on behalf of Mr Cotton that Mr Gosling is not in employment.

[14] Section 138(4A) of the Act provides that if the compliance order relates in whole or part to payment of a sum of money the Authority may order payment to the employee by instalments but only if the financial position of the employer requires it.

[15] To properly consider this Mr Gosling was directed by the Authority to provide documentary evidence of his financial situation following a case management conference with the Authority on 20 March 2023. He was to do so by 14 April 2023. There was a failure to comply with that direction and no documentary evidence of his financial situation has been provided to the Authority.

[16] The information about the ability of Mr Gosling to pay is insufficient. It does not enable the Authority to conclude that the financial position of Mr Gosling requires an order for payment by instalment.

[17] There is no dispute that there has not been compliance with the orders made by the Authority in the two determinations. Mr Cotton has waited a considerable period for payment. Part of the delay in seeking compliance was said to be because of difficulties ascertaining Mr Gosling's whereabouts.

[18] There is insufficient information before the Authority to conclude that payment should be ordered by instalment.

[19] I order that Mr Gosling comply with the orders made in the two determinations and make the following payments within 28 days of the date of this determination to Mr Cotton:

- (a) The sum of \$10,010 gross being reimbursement of lost wages.
- (b) The sum of \$830.45 gross being arrears of wages.
- (c) The sum of \$131.12 gross being unpaid holiday pay.
- (d) The sum of \$8000 without deduction being compensation.
- (e) The sum of \$2,250 being costs
- (f) The sum of \$71.56 being reimbursement of the filing fee.

[20] There are very serious consequences where there is a failure to comply with a compliance order. I record the ability for the Authority to extend the time specified to obey the compliance order on the application of the person required to obey the order in s 138(3) of the Act. If such extension application was to be made within the time for compliance of 28 days clear documentary information about Mr Gosling's financial position would be required to be provided to the Authority and Mr Anderson.

**Should there be interest awarded on the amounts payable?**

[21] The Authority has the power to award interest calculated in accordance with schedule 2 of the Interest on Money Claims Act 2016. I conclude it is appropriate to make an interest award on the amounts outstanding. Mr Cotton has been without the use of the money for a considerable period and there has been no attempt to make any payment in reduction of the amounts awarded.

[22] The amounts ordered payable in the substantive determination of 16 March 2022 were payable immediately. I have allowed 28 days and calculate interest on the combined amounts

awarded in the substantive determination in the sum of \$18,971.57 from 13 April 2022 to the date of this determination. I have used the Ministry of Justice civil debt interest calculator. Interest on the sum of \$18,971.57 from 13 April 2022 to 11 May 2023 is the sum of \$618.15.

[23] The amounts ordered payable in the costs determination of 12 April 2022 were payable immediately. I have allowed 28 days and calculated interest on the amount awarded in the costs determination of \$2321.56 from 10 May 2022 to the date of this determination. I have used the Ministry of Justice civil debt interest calculator. Interest on the sum of \$2,321.56 from 10 May 2022 to 11 May 2023 is the sum of \$72.66.

### **Costs**

[24] Mr Anderson has claimed costs for this application. He has provided a copy of an invoice stating actual costs incurred to date by Mr Cotton are \$1,207.50. Given the short time for investigation he seeks a contribution of \$750 together with reimbursement of the filing fee of \$71.56.

[25] The claim for \$750 costs and reimbursement of the filing fee of \$71.56 is reasonable.

[26] Darcee Gosling is ordered to pay costs in the sum of \$750 together with reimbursement of the filing fee of \$71.56.

### **Summary of orders made**

[27] Mr Gosling is ordered to comply with the orders made in the two determinations and make the following payments to Mr Cotton within 28 days of the date of this determination:

- (a) The sum of \$10,010 gross being reimbursement of lost wages.
- (b) The sum of \$830.45 gross being arrears of wages.
- (c) The sum of \$131.12 gross being unpaid holiday pay.
- (d) The sum of \$8000 without deduction being compensation.
- (e) The sum of \$2,250 being costs.
- (f) The sum of \$71.56 being reimbursement of the filing fee.

[28] Interest is ordered payable as below:

- (a) In the sum of \$618.15 from 13 April 2022 to the date of this determination on the sum of \$18,971.57.
- (b) In the sum of \$72.66 from 10 May 2022 to the date of this determination on the sum of \$2,321.56.

[29] Mr Gosling is ordered to pay on this application costs in the sum of \$750 together with reimbursement of the filing fee of \$71.56.

**Helen Doyle**  
**Member of the Employment Relations Authority**