

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 63
5530335

BETWEEN

PAULINE COUSENS
Applicant

AND

HARK ENTERTAINMENT
LIMITED
Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in Person
No appearance for Respondent

Investigation Meeting: On the papers

Determination: 2 March 2015

DETERMINATION OF THE AUTHORITY

- A. Hark Entertainment Limited is ordered to comply with the Record of Settlement dated 8 July 2014 by making a payment to Ms Cousens in the amount of \$3,074 gross within seven (7) days of the date of this determination.**
- B. Hark Entertainment Limited is ordered to pay a penalty in the amount of \$2,000 for its breach of the Record of Settlement. The whole of the penalty is to be paid to Ms Cousens within seven (7) days of the date of this determination.**
- B. Hark Entertainment Limited is ordered to reimburse Ms Cousens' costs of \$71.56 within seven (7) days of the date of this determination.**

Employment relationship problem

[1] Ms Pauline Cousens seeks an order for compliance in relation to payments due under a Record of Settlement (settlement agreement) made in mediation with her former employer, Hark Entertainment Limited (HEL).

[2] On 29 January 2015 I issued a minute to the parties advising them of the process I intended to follow in determining this matter. I set out a timetable for the lodging of an amended statement of problem, and a statement in reply. I provided both parties the opportunity to comment on my proposed process and reminded HEL it would need to lodge and serve an application for leave to respond or reply to the application if it failed to lodge a statement in reply in accordance with the timetable set out in the minute. No statement of reply has been received and the Authority has proceeded to determine this matter on the papers.

Issues

[3] The issues requiring determination are whether HEL has breached the Record of Settlement and whether a compliance order and penalty should be awarded against HEL for its non-compliance.

Background

[4] The parties attended mediation on 8 July 2014 and reached an agreed settlement of the employment relationship problems between them. The settlement was recorded in a Record of Settlement (the settlement agreement) and signed by a Mediator employed by the Ministry of Business, Innovation and Employment (MBIE) pursuant to section 149 of the Employment Relations Act 2000 (the Act).

[5] The settlement agreement provided for payments to be made to Ms Cousens on 10 September and 10 October 2014 altogether totalling \$6,148.00 gross. Despite the agreement, Ms Cousens has only received one payment of \$3,074.00 gross in September 2014.

Compliance order

[6] The public interest in having the terms of a settlement agreement, made and certified in mediation, honoured by the parties to that settlement agreement favours an

order for compliance. HEL should have completed its side of the bargain by no later than 10 October 2014 but has failed to do so.

[7] The Act states that settlement agreements certified pursuant to section 149 are final, binding and enforceable. It is appropriate for the compliance order sought to be made.

[8] Pursuant to the Settlement agreement Hark Entertainment Limited is ordered comply with the settlement agreement and to pay to Ms Cousens the sum of \$3,074 gross within seven (7) days of the date of this determination.

Penalty

[9] Ms Cousens seeks the imposition of a penalty. Section 149(4) of the Act allows the Authority to impose a penalty for a breach of a term of settlement once signed by a person empowered to do so, that is, a mediator employed by MBIE.

[10] Penalties are designed to punish and deter others from engaging in similar conduct.¹ I find this case warrants the imposition of a penalty. HEL's conduct in failing to adhere to its promises recorded in the settlement agreement was deliberate, serious and sustained over period of four months.

[11] I consider a penalty of \$2,000 to be justified in the circumstances of this matter and order the whole of the penalty be paid to Ms Cousens within seven (7) days of the date of this determination.

Costs

[12] Hark Entertainment Limited is ordered to reimburse Ms Cousens the \$71.56 filing fee in respect of this application for a compliance order within seven (7) days of the date of this determination.

¹ *Tan v Yang & Zhang* [2014] NZEmpC 65.

Further non-compliance

[13] The Authority's orders may be the subject of a further application for compliance in the Employment Court which is empowered to impose sanctions for continuing non-compliance which include imprisonment, fines and the sequestration of property.

Vicki Campbell
Member of the Employment Relations Authority