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Coventry v Singh (Auckland) [2011] NZERA 580; [2011] NZERA Auckland 375 (29 August 2011)

Last Updated: 7 September 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 375 5352490

BETWEEN

NOEL COVENTRY

AND

VINCENT SINGH

Member of Authority:

Yvonne Oldfield

Representatives:

Richard Upton for applicant

No appearance for Mr Singh

Investigation meeting

26 August 2011

Determination:

29 August 2011

DETERMINATION OF THE AUTHORITY ON AN APPLICATION FOR

COMPLIANCE

Employment Relationship Problem

[1] This application is for compliance with orders made in determinations [\[2011\] NZERA Auckland 131](#) and [\[2011\] NZERA Auckland275](#).

[2] In the first of these (dated 1 April 2011) the respondent, Mr Singh, was ordered to pay the following to Mr Coventry:

- i. arrears of \$5,367.00 gross;
- ii. holiday pay of \$629.36;
- iii. interest on the arrears and holiday pay at 8.4% per annum from 19 October 2010 until the date of payment;
- iv. lost earnings of \$1,350.00 gross, and v. compensation of \$3,000.00 for hurt and humiliation.

[3] The second determination (dated 27 June 2011) awarded full costs to Mr Coventry (\$3,795.00) plus disbursements of \$346.60.

[4] Mr Coventry makes the present application on the basis that he has had no response to requests for payment his representatives have made of Mr Singh. He says the judgement sums remain due and payable.

[5] Mr Coventry now seeks:

- i. a determination pursuant to section 137 (1) (b) of the Employment Relations Act that the Respondent has not complied with the determinations of the Authority;
- ii. a compliance order pursuant to section 137 (2) of the Act requiring the Respondent to pay the Applicant the sums specified above and to do so within 14 days of the date the order for compliance is made, and
- iii. full costs in respect of this application.

Service

[6] Paragraphs [3] to [6] of the Costs determination dated 27 June record the considerable problems the Authority had serving Mr Singh with costs submissions. In the end, at my direction, the papers were served on him by courier delivery at the address for service of 4 Square Design Limited, of which he is a director. When a "track and trace" confirmed receipt of the documents at that address (the business premises of RKK Accountants) I was satisfied that they had been brought to Mr Singh's attention. After allowing time for him to respond, and receiving no such response I proceeded to determine costs.

[7] Similar problems have again arisen in attempting to effect service in relation to the present application. The Authority attempted to serve the statement of problem on Mr Singh by courier delivery first to his home address and then to his business premises. (These were addresses used in the original proceedings. At no stage during those proceedings or since had Mr Singh signalled any change of address.) On both occasions the papers were returned unopened.

[8] The applicant was then directed to arrange personal service on Mr Singh of the statement of problem and a notice of investigation meeting to be conducted on 18 August (my Minute of 12 August, which is attached, refers.)

[9] On 16 August Mr Upton provided the Authority Support Officer for the file with a copy of the report of the process server engaged to serve the papers. The report indicated that while waiting outside the respondent's business premises the process server had spoken with someone who identified himself as an employee of the respondent. This individual was reported as having advised that Mr Singh was not present and that it was not known when he might arrive. The individual offered to pass the papers for service to Mr Singh and the process server left them with him on that basis.

[10] I was not satisfied that this constituted effective service on Mr Singh. I adjourned the investigation meeting and made directions for substituted service as set out in a further Minute dated 16 August 2011 (attached.)

[11] The party to be served in substitution for Mr Singh was RKK Accountants. The statement of problem and notice of an investigation meeting (to be held on 26 August) were accompanied by a covering letter which advised RKK Accountants that those documents, along with the Minute of 16 August, were to be brought to Mr Singh's attention no later than three clear days from the date of investigation meeting

(26 August.)

[12] A CourierPost track and trace of delivery indicates that the documents were delivered to RKK Accountants on 18 August 2011.

[13] There has been no communication from either Mr Singh or RKK Accountants to the Authority. In the absence of any advice to the contrary I now proceed on the basis that service has been effected and determine the application for compliance on evidence taken from Mr Coventry and his wife at the investigation meeting held on 26 August.

Determination

[14] Mr and Mrs Coventry told me that after the Costs determination of 27 June was issued they approached Mr Coventry's former representative, Mr Bennett, and instructed him to seek payment from Mr Singh. They told me that they understand that he did so very shortly afterwards but reported back that he had received no response from Mr Singh.

[15] Thereafter for reasons unrelated to Mr Coventry's case Mr Bennett passed the file to Mr Upton. I was told that Mr Upton wrote to Mr Singh on 13 July seeking payment of the awards made in the two determinations. Mr Upton advised that he had emailed the letter to Mr Singh at an email address which he had been known to use in the past. He also sent it hardcopy to three different addresses: the same addresses the Authority had understood to be his home and business addresses and also to RKK Accountants. There was no response (and the papers were not returned to sender.)

[16] Mr Upton then proceeded to lodge the application for compliance. I have already set out the history of the Authority's ensuing problems in effecting service .

[17] Mr and Mrs Coventry advised details of the costs incurred in pursuit of the present application as follows:

Server's fee	\$161.00

Lawyer's fee (preparation etc)	\$1,523.75
Lawyer's fee (attendance at investigation meeting 26 August)	\$250.00 (plus GST)
Mr Coventry's time (attendance at investigation meeting 26 August)	\$250.00
Mrs Coventry's time (attendance at investigation meeting 26 August)	\$250.00

[18] The Authority has a discretion to make an order for compliance where it has been established that the party against whom the order is sought has failed to comply with an order of the Authority. The Authority's discretion must be exercised according to principle however the party affected by non-compliance (in this case, Mr Coventry) is entitled to an order for compliance unless there is good reason for the Authority to refuse it.

[19] It has been established that Mr Singh has had an opportunity to meet his obligations as set out in the Authority's substantive and costs determinations. It has also been established that he has failed to do so. There has been no suggestion, even in the original proceedings, that Mr Singh's business has been in difficulty, and his failure to appear means that I have no evidence to suggest that there is any other good reason to refuse an order for compliance.

[20] In the circumstances it is an appropriate exercise of the Authority's discretion to order Mr Singh to comply with the orders contained in the Authority's previous determinations.

Orders for Compliance

[21] I order that the respondent, Mr Vincent Singh, comply with earlier orders set out in determinations [2011] NZERA Auckland 131 and [2011] NZERA Auckland 275 and do so within 21 days of the date of this determination.

[22] Specifically, he is to comply with previous orders to pay to Mr Coventry:

- i. arrears of \$5,367.00 gross;
- ii. holiday pay of \$629.36;
- iii. interest on the arrears and holiday pay at 8.4% per annum from 19 October 2010 until the date of payment;
- iv. lost earnings of \$1,350.00 gross;
- v. compensation of \$3,000.00 for hurt and humiliation, and
- vi. full costs of \$3,795.00 plus disbursements of \$346.60.

[23] For Mr Singh's information I note that the obligation on a person against whom a compliance order has been made is a strict one. In the event that the compliance order itself is not complied with, it may be enforced in the Employment Court, which has the powers set out at s.140 (6) of the Employment Relations Act. These include sequestration of property, a fine not exceeding \$40,000.00 and imprisonment for up to three months.

Costs in relation to the present application

[24] The costs Mr Coventry has incurred in respect of this application for compliance are reasonable. Given the inconvenience to which he has been put in pursuing his entitlements I am satisfied that he should receive full solicitor-client costs of \$1,773.75.

[25] I am not however satisfied that a case has been made for reimbursement of Mr and Mrs Coventry's own time or the cost of the process server (who did not successfully execute service in any event.)

[26] I therefore order that Mr Singh pay a further sum of \$1,773.75 to Mr Coventry in respect of costs incurred in the present application.

Yvonne Oldfield

Member of the Employment Relations Authority