

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2023] NZERA 497  
3207079

BETWEEN                      CTR ROOFING LIMITED  
   Applicant  
  
AND                                NORTON CROSS  
   Respondent

Member of Authority:        Peter Fuiava  
  
Representatives:              Tom Jarman, counsel for the Applicant  
   No appearance by the Respondent  
  
Investigation Meeting:        On the papers  
  
Submissions received:        31 July 2023 from the Applicant  
  
Determination:                05 September 2023

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**DETERMINATION OF THE AUTHORITY**

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**What is the Employment relationship problem?**

[1]     CTR Roofing Limited (CTR or the company) seeks a compliance order under s 137(1)(a) of the Employment Relations Act 2000 (the Act) on the grounds that its former employee, Norton Cross, has failed to return company equipment and has failed to repay a car loan made to him by Corey Tarrant, CTR's sole shareholder and director. While Mr Cross has not engaged with this investigation, cl 12 sch 2 of the Act allows the Authority to proceed in his absence.

**What are the relevant facts?**

[2]     On 28 February 2022, Mr Cross was employed by CTR as a leading hand/apprentice but his employment ended on 12 September 2022 because of serious misconduct. However, Mr Tarrant gave Mr Cross a second chance and re-employed him a week later on 19 September on the same terms and conditions of employment

which included that if his employment ended for whatever reason, he was required to immediately return all property, documents, and items belonging to CTR or its clients. As part of Mr Cross's employment, he was issued with the following equipment by the company:

- (a) Yard key;
- (b) iPhone 11 (\$781.84 incl. GST);
- (c) Milwaukee shears (\$1,000 incl. GST);
- (d) Milwaukee charger and battery (\$600 incl. GST); and
- (e) Makita drill and battery (\$450 incl. GST).

[3] On 11 August 2022, Mr Cross purchased a 2007 Mitsubishi Outlander from CTR for \$2,000 which he agreed to repay at the mutually agreed rate of \$100 per week to be deducted from his wages. In a text message to Mr Tarrant, Mr Cross accepted the arrangement stating "Sweet haha thank you heaps!!"

[4] In early November 2022, Mr Cross resigned from his employment. Mr Tarrant believes that the Mitsubishi Outlander has since been sold but there remains an outstanding balance of \$879.92 on the purchase price.

[5] Mr Tarrant wrote to Mr Cross on 11 and 22 November 2022, asking him to return the company equipment issued to him and to repay the remaining balance on the vehicle. There has been no response to those letters by Mr Cross. The following schedule sets out what he owes to the company:

<b>Item</b>	<b>Date</b>	<b>Amount (incl.GST)</b>
Company equipment	13 Sept 2022	\$2,831.84
Balance outstanding for the vehicle	13 Sept 2022	\$879.92
Process server fee	14 Dec 2022	\$92.00
Authority filing fee	22 Dec 2022	\$71.55
Legal fees	As of 30 June 2023	\$5,842.02
<b>Total:</b>		<b>\$9,717.33</b>

### **How has the Authority investigated?**

[6] An affidavit of service from a process server establishes that CTR's Statement of Problem and support documentation was left at Mr Cross's address. The process server believes it to be Mr Cross's address because one of his neighbours acknowledged that he lived there. I am satisfied that Mr Cross is aware of this proceeding.

[7] As part of the Authority's investigation process, a case management conference was held on 23 June 2023. Mr Jarman, counsel for CTR, attended the teleconference but there was no appearance by Mr Cross. The conference call proceeded in his absence and a copy of my minute of 23 June was couriered to Mr Cross's address. However, the minute was returned to the Authority because the receiver refused to accept delivery. This suggests that Mr Cross still lives at the address.

[8] To minimise costs, my determination has been made on the papers. In support of CTR's application for a compliance order, I have received a sworn affidavit from Mr Tarrant in which he attests that the company's equipment described above and the unpaid balance on the purchase price for the vehicle remain outstanding by Mr Cross.

[9] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

#### **Should the Authority make a compliance order against Mr Cross?**

[10] Section 161(1)(n) of the Act gives the Authority exclusive jurisdiction to make compliance orders under section 137, which gives it the power to order compliance with statutory provisions, the terms of employment agreements, orders, determinations, directions and requirements made under the Act.

[11] In the present case, I have been asked to order that Mr Cross now comply with the terms of his individual employment with respect to the return of company equipment and the repayment of a car loan he agreed with CTR to pay. Attached to the Statement of Problem are copies of Mr Cross's payslips from 8 August to 25 September 2022 which show that he had been repaying the company (and not Mr Tarrant personally) at the rate of \$100 per week.

#### **Outcome**

[12] Based on the information and evidence I have before me as of the date of issuing this determination, I grant CTR's application for a compliance order against Mr Cross.

### **Summary of orders, costs and reasonable expenses incurred**

[13] The Authority orders Norton Cross to return the following company equipment to CTR no later than 4 pm Tuesday 26 September 2023:

- (i) Yard key;
- (ii) iPhone 11 (\$781.84 incl. GST);
- (iii) Milwaukee shears (\$1,000 incl. GST);
- (iv) Milwaukee charger and battery (\$600 incl. GST); and
- (v) Makita drill and battery (\$450 incl. GST).

[14] If Mr Cross fails to return the above equipment by the due date, the Authority orders that he immediately pay CTR the amount of \$2,462.47 (ex GST) in reimbursement for the equipment. An ex-GST figure for the company equipment has been used given the likelihood that CTR has already received the relevant GST refund. To be clear, if the equipment is not returned, the ex-GST figure \$2,462.47 becomes payable as of 4 pm Tuesday 26 September 2023.

[15] Mr Cross is further ordered to immediately repay the balance of his car loan of \$879.92 to CTR by 4 pm Tuesday 26 September 2023.

[16] As for the costs of this application, having proceeded on the papers so as to keep costs down for both parties, I fix costs at \$1,125. It is reasonable to require Mr Cross to reimburse CTR the cost of paying the filing fee of \$71.55 to bring this application to the Authority as well as the process server fee of \$92 in having its Statement of Probable served at his home address. These costs and expenses are to be paid no later than 4 pm Tuesday 26 September 2023.

[17] Imposition of a compliance order is a serious matter. If Mr Cross fails to comply with this compliance order, CTR may apply to the Employment Court for it to exercise its powers under s 140(6) of the Act.

Peter Fuiava  
Member of the Employment Relations Authority