

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2020] NZERA 495  
3098453

BETWEEN                      BROOKE CUTTING  
   Applicant  
  
AND                                      COMPOST ME LIMITED  
   Respondent

Member of Authority:            Michele Ryan  
  
Representatives:                    Applicant in person  
   No appearance by the respondent  
  
Investigation Meeting:            27 November 2020  
  
Submissions [and further        Nil from either party  
Information]  
  
Date of Determination:            1 December 2020

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Ms Brooke Cutting was employed by Compost Me Limited (Compost Me) for approximately 15 months' until her resignation in August 2019. On her departure Ms Cutting was owed wages and holiday pay.

[2] Ms Heidi Nixon is the managing director of Compost Me.

[3] Prior to the Authority's involvement, a small number of repayments had been made by Compost Me and Ms Nixon to address the arrears. However, Ms Cutting says a significant sum remains outstanding. She now seeks orders for payment of all entitlements comprising: wages, holiday pay and KiwiSaver contributions.

### **The Authority's investigation**

[4] In a case management conference call held on 12 October 2020 Ms Nixon advised Compost Me was likely to experience increased orders and revenue in the coming months which might resolve Ms Cutting's claims.

[5] On the basis of that information and alongside an agreement that Ms Cutting would receive instalment payments of \$50 per week over the intervening period, arrangements were made for a further conference call on 9 November 2020. Both parties agreed to confirm to the Authority the amount each considered was owed.

[6] By email on 9 November 2020 Ms Nixon confirmed the sum Ms Cutting asserted was owed, but advised she was unable to attend the call. A conference call was rescheduled. Ms Nixon not able to be contacted at the allocated time on 12 November 2020 and the conference call was progressed with Ms Cutting.

[7] A Notice of Direction and Notice of Investigation was sent to the parties on 12 November 2020 confirming an in-person investigation meeting was scheduled for 27 November 2020 at the Authority's offices in Wellington.

[8] The Notice of Direction advised Compost Me that the meeting was "*likely to result in orders for payment of the sums owing to the applicant which did not appear to be in dispute*".<sup>1</sup> The Notice of Direction set out the nature of financial records that Compost Me needed to produce if it wished to establish orders for instalment payments were warranted.

[9] Half an hour before the meeting Ms Nixon sent an email advising she could not provide the necessary documentation at this juncture. She was asked to attend the meeting in any event but, as it transpired, she was not in Wellington.

[10] I decided to progress with determining Ms Cutting's claim as it is at least 15 months' since the payment claimed became due.

[11] Soon after the investigation meeting began, by email Ms Nixon sent to the Authority:

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<sup>1</sup> Notice of Direction dated 12 November 2020.

- (a) a signed statutory declaration setting out some of the difficulties Compost Me faced over the past 12 months, and
- (b) a document setting out target order dates.

[12] Unfortunately this material was insufficiently detailed to allow for a proper assessment of Compost Me's overall financial position and I am therefore unwilling to make orders for instalment payments in the circumstances.

***What is the quantum of monies owed?***

[13] In the email sent to the Authority on 9 November 2020 Ms Nixon confirmed Ms Cutting is owed \$16,815.62. Ms Cutting advised a \$50 instalment payment had been deposited into her account after the email had been sent. I am satisfied Ms Cutting is owed \$16,765.62 (net) as arrears of wages and holiday pay. As minimum entitlements these sums must be paid without further delay.

[14] A spread-sheet, accompanying Compost Me's statement in reply dated 22 April 2020, confirms KiwiSaver contributions of \$8,032.81 have not yet been placed in Ms Cuttings KiwiSaver account. Those contributions form a component of Ms Cutting's salary/wages and must also be paid.<sup>2</sup>

[15] I am also satisfied that it is appropriate in the circumstances of this case to award interest on the sums owed to Ms Cutting.<sup>3</sup>

**Orders**

[16] Within 28 days of the date of this determination Compost Me Limited must pay Ms Brooke Cutting:

- (a) \$16,765.62 (net) in wage and holiday pay arrears which is to be paid directly to her Ms Cutting's bank account;<sup>4</sup>

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<sup>2</sup> As confirmed in the parties' employment agreement which provides that the employer superannuation contributions will be treated as salary/wages.

<sup>3</sup> The Authority may, under clause 11(1) of Schedule 2 of the Employment Relations Act 2000, Act, if it thinks fit, order the payment of interest in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

<sup>4</sup> Pursuant to s 131(1)(a) & (b) of the Employment Relations Act 2000.

- (b) the sum of \$8,032.81<sup>5</sup> which is to be forwarded to IRD to be deposited into Ms Cutting's KiwiSaver account.
- (c) Interest on the Orders above sums at the rate applied in the Interest on Money Claims Act 2016, beginning 7 April 2020 (the date in which Ms Cutting lodged her statement of problem) until the sums are paid in full.

**Costs**

[17] I order Compost Me Limited to reimburse Ms Cutting \$71.56; the cost of the filing fee paid to the Authority so that she could progress her claims. No further orders for costs are required where Ms Cutting was self – represented.

Michele Ryan  
Member of the Employment Relations Authority

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<sup>5</sup> As confirmed in the parties' employment agreement. Any employer superannuation contribution tax (ESCT) owed on that sum is to be paid by Compost Me.