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Deng v Henry Feng Lawyers limited (Auckland) [2018] NZERA 110; [2018] NZERA Auckland 110 (3 April 2018)

Last Updated: 13 April 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2018] NZERA Auckland 110
3024924

BETWEEN QIANG DENG Applicant

AND HENRY FENG LAWYERS LIMITED

Respondent

Member of Authority: Eleanor Robinson

Representatives: May Moncur, Advocate for Applicant

Henry Feng, Representative for Respondent

Investigation Meeting On the papers

Determination: 03 April 2018

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] The Applicant, Ms Qiang Deng, has applied to the Authority under [s 137](#) of the [Employment Relations Act 2000](#) (the Act) for an order requiring the Respondent, Henry Feng Lawyers Limited to comply with the determination given by the Authority.

[2] In the determination issued on 11 August 2017 ([2017] NZERA Auckland 235), the

Authority ordered Henry Feng Lawyers Limited to pay Ms Deng the sum of:

(i) \$5115.38 in respect of lost remuneration pursuant to [s.123](#) (1)(b) of

[Employment Relations Act 2000](#) (the Act).

(ii) \$4000.00 in respect of humiliation, loss of dignity and injury to feelings, pursuant to [s.123\(1\)\(c\)](#) (1) of the Act.

(iii) These sums were reduced by 80% for contribution

[3] In the determination issued on 8 September 2017 ([2017] NZERA Auckland 271), the Authority ordered Henry Feng Lawyers Limited to pay a contribution towards Ms Deng's costs in the sum of \$3,000.00.

[4] Henry Feng Lawyers Limited therefore had been ordered to pay Ms Deng a total sum of \$4823.08.

[5] The Applicant claims that she has not been paid the sums ordered by the Authority.

[6] In the Statement in Reply filed with the Authority on 13 March 2018 Henry Feng Lawyers Limited claims that it posted a cheque to Ms Deng at her last known address however it has not been returned to date.

[7] Henry Feng Lawyers Limited submits that it is unwilling to make payment until the cheque is returned or is stalled on 15 November 2018.

[8] Ms Moncur, on behalf of Ms Deng submits that no payment has been received by Ms Deng despite Mr Feng advising her (Ms Moncur) on 16 November 2017 that payment had been made directly into Ms Deng's bank account. Moreover Ms Moncur submits that Ms Deng had never resided at the address to which Henry Feng Lawyers Limited said it had sent the payment cheque.

Compliance Order

[9] I am satisfied that Henry Feng Lawyers Limited has not complied with the terms of the Authority's determinations of 11 August and 8 September 2017. It is just in the circumstances for an order to be made requiring Henry Feng Lawyers Limited to comply with the determinations.

[10] Henry Feng Lawyers Limited is ordered to pay Ms Deng \$4823.08 pursuant to the Authority's determinations [2017] NZERA Auckland 235 and [2017] NZERA Auckland within 14 days of the date of this determination.

Interest

[11] I consider that it is appropriate that Henry Feng Lawyers Limited is ordered to pay interest on the outstanding sums owed to Ms Deng.

[12] Henry Feng Lawyers Limited is to pay interest of 5% on the outstanding sums due to

Ms Deng from the date of determination until the amounts owed are paid in full

[13] Henry Feng Lawyers Limited is ordered to comply as ordered above within 14 days of the date of this determination.

Filing Fee

[14] Henry Feng Lawyers Limited is also to pay \$71.56 to Ms Deng, the fee on the application for the Compliance Order.

Penalty

[15] Ms Moncur has applied for a penalty, however breach of an Authority determination ordering remedies does not fall under s 134A, but is a matter in which interest may be awarded for non-compliance.

[16] Accordingly I have so ordered.

Effect of further non-compliance

[17] Henry Feng Lawyers Limited is advised that if it does not observe or comply with this Compliance Order the Employment Court may do 1 or more of the following pursuant to s 140 of the Act:

(c) order that the person in default be sentenced to imprisonment for a term not exceeding 3 months;

(d) order that the person in default be fined a sum not exceeding

\$40,000;

(e) order that the property of the person in default be sequestered.

Costs

[18] This matter was determined 'on the papers' by consent of the parties, and I award Ms Deng a contribution to her costs in the sum of \$250.00 in this matter, to be paid within 14 days of service of this determination.

Eleanor Robinson

Member of the Employment Relations Authority