



# New Zealand Employment Relations Authority Decisions

You are here: [NZLII](#) >> [Databases](#) >> [New Zealand Employment Relations Authority Decisions](#) >> [2021](#) >> [\[2021\] NZERA 405](#)

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

## Dickson v Starting in Fencourt Limited [2021] NZERA 405 (14 September 2021)

Last Updated: 21 September 2021

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND		
I TE RATONGA AHUMANA TAIMAHI TĀMAKI MAKAURAU ROHE		
		<a href="#">[2021] NZERA 405</a> 3145641
	BETWEEN	TRUDI DICKSON Applicant
	AND AND	STARTING IN FENCOURT LIMITED Respondent  DEAN RANGIHUNA Second Respondent
Member of Authority:	Philip Cheyne	
Representatives:	Andrea Dunseath, counsel for the Applicant	
No appearance for the Respondents		
Investigation Meeting:	10 September 2021	
Date of Determination:	14 September 2021	
DETERMINATION OF THE AUTHORITY		

A. Pursuant to [section 137](#) of the [Employment Relations Act 2000](#), Starting in Fencourt Limited is to pay Trudi Dickson \$19,988.76 by Friday 24 September 2021, comprised of the following amounts:

- a. Compensation of \$15,000.00;
  - b. Reimbursement of \$2,060.00;
  - c. Arrears of \$97.20;
  - d. Penalties of \$600.00; and
  - e. Costs of \$2,231.56.
- B. Pursuant to [section 137](#) of the [Employment Relations Act 2000](#), Dean Rangihuna is to make the payments to Trudi Dickson referred to in (A) above, as agent for Starting in Fencourt Limited, by Friday 24 September 2021.
- C. Pursuant to clause 11 of Schedule 2 [Employment Relations Act 2000](#), Starting in Fencourt Limited is to pay Trudi Dickson interest of \$40.05, by Friday 24 September 2021.

D. Pursuant to clause 15 of Schedule 2 [Employment Relations Act 2000](#), Starting in Fencourt Limited is to pay Trudi Dickson cost of \$1,658.56, by Friday 24 September 2021.

### Employment relationship problem

[1] Starting in Fencourt Limited is a registered company. Its sole director and shareholder is Dean Rangihuna. The company operates a bar in Hamilton.

[2] In an earlier determination,<sup>1</sup> the Authority ordered Starting in Fencourt Limited to pay Trudi Dickson various sums (compensation, reimbursement, arrears, penalties, costs) by 9 July 2021. Starting in Fencourt has paid Ms Dickson nothing. Ms Dickson seeks a compliance order against the company and its sole shareholder/director requiring payment of the sums ordered, plus interest and costs.

[3] The present application was lodged on 12 July 2021. As usual, the Authority served the application. A statement in reply was expected by 28 July 2021. On 28 July, Mr Rangihuna requested an extension of time for a reply. Despite counsel's opposition, time was extended to 10.00 am on 2 August. Mr Rangihuna was advised by email on 29 July. At 11.32 am on 2 August the Authority received a message from Mr Rangihuna. Mr Rangihuna did not directly answer the compliance order application, but expressed some dissatisfaction with the earlier determination and its orders.

[4] The matter was allocated to me and a case management conference was scheduled for 27 August. That information was sent to Mr Rangihuna by email, with advice of the number he would be called on. Mr Rangihuna did not request the Authority to use a different phone number and did not answer the call on 27 August.

<sup>1</sup> *Dickson v Starting in Fencourt Limited* [\[2021\] NZERA 243](#).

The conference continued with just counsel. The applicant was directed to lodge a statement of evidence and the investigation meeting by phone conference was set for 10 September.

[5] The notice of direction and notice of investigation meeting were served on Mr Rangihuna, to his email address. The notices were also served by post to the company's registered office. The investigation meeting was scheduled to take place by phone conference. Mr Rangihuna and the company were given instructions on how to join the call. In the notice of direction, I noted that the applicant was seeking compliance orders against the company and Mr Rangihuna personally for the company's failure to pay the sum as ordered. The notice continued:

2. Dean Rangihuna was not personally a party to those proceedings (file number 3110832) and is not identified as a respondent party to the present compliance order application (file number 3145641). I am obliged under [s 138\(2\)](#) to give Mr Rangihuna an opportunity to appear or be represented in these proceedings, before exercising the Authority's powers under [s 137\(2\)](#).

[6] Neither Mr Rangihuna nor the company joined the investigation meeting at the time set. I delayed starting the investigation meeting briefly. They still did not join. Despite Mr Rangihuna's and the company's non-attendance, I decided to proceed. In accordance with the Chief's instruction to Members for the continued discharge of functions during the current Covid-19 restrictions, I received Ms Dickson's confirmation of her identity and the truth of the draft affidavit that had been lodged on her behalf.

[7] This determination records the oral indication I gave at the end of the investigation meeting.

### Compliance order - Starting in Fencourt Limited

[8] I find that Starting in Fencourt Limited has not complied with the orders made in the Authority's determination of 9 June 2021.<sup>2</sup>

[9] In messaging to the Authority, after being advised that the respondent had been granted additional time to lodge its reply, Mr Rangihuna wrote several things suggesting that the business did not have resources to meet its obligations to Ms Dickson. However, there is no evidence to establish that the company is insolvent or

<sup>2</sup> *Dickson v Starting in Fencourt Limited* [\[2021\] NZERA 243](#).

unable to pay the amounts it owes to Ms Dickson. Some social media material provided as part of the present application confirms that the business is still actively trading. Despite its apparent solvency, I am satisfied that Starting in Fencourt Limited is unlikely to comply with the earlier orders of the Authority, without the sanction of a compliance order.

[10] There will be an order requiring the company to comply with the Authority's earlier orders for payments to Ms Dickson.

[11] I am required to specify a time within which the compliance order is to be obeyed.<sup>3</sup> The company was afforded a month from the date the determination was issued to allow it to make arrangements. Nothing was achieved by that time. The company has not properly engaged with this matter since then. There is no reason to allow an extended time for it to now obey with the orders. I will allow until Friday next week (24 September 2021) for the company and Mr Rangihuna to seek appropriate advice to understand the serious consequences of not complying with the compliance order.

### **Compliance order – Dean Rangihuna**

[12] A compliance order is also sought against Mr Rangihuna personally as the company's sole director, to require him "to ensure Starting in Fencourt Limited complies with the Determination". I am referred to *Allen Chambers Ltd v Pelabon*.<sup>4</sup>

[13] In that case, the employer company had been ordered to pay wages, holiday pay, compensation and costs to a former employee. No payment was made. The employee then sought a compliance order against the employer company, a second company that was its sole shareholder and the person who was the sole director of both the employer company and the shareholder company. The Authority made a compliance order against the employing company to pay the sums to the former employee, but also ordered the director personally to make that payment as agent of the employer company. Orders were also made requiring the shareholder company to advance funds to enable the employer company and the director to comply. In making those orders, the Authority relied on an earlier judgment, made under the [Labour Relations Act 1987](#).<sup>5</sup>

<sup>3</sup> [Employment Relations Act 2000, s 137\(3\)](#).

<sup>4</sup> *Allen Chambers Ltd v Pelabon* [2019] NZEmpC 45.

<sup>5</sup> *Northern Clerical Workers Union v Lawrence Publishing Co of New Zealand Inc* 91990) ERNZ Sel Cas 667, [1990] 1 NZILR 717 (LC).

In *Allen Chambers*, The Employment Court held that the Authority was correct to apply the *Lawrence Publishing* case as an appropriate precedent, as the compliance jurisdiction under the [Employment Relations Act 2000](#) was materially identical to the jurisdiction at the time of the *Lawrence Publishing* case.

[14] It appears from the *Allen Chambers* case that the director and the shareholder company arranged the business of the employer company so that it had not retained funds to meet any judgment through standard civil enforcement processes. The director and the shareholder company held complete control over the employer company. They were responsible for carrying out the act that the employer company had been ordered to perform. Here, there is no evidence to suggest that Mr Rangihuna has arranged the affairs of Starting in Fencourt Limited so it does not have the funds to meet its legal obligations to Ms Dickson. However, Mr Rangihuna is the only person with the authority to take the steps required for Starting in Fencourt Limited to comply. Starting in Fencourt Limited did not comply with the orders made against it on 9 June 2021 because Mr Rangihuna did not take those steps, as agent of that company, for it to comply by 9 July 2021. Starting in Fencourt Limited would only comply with the compliance order if Mr Rangihuna, as the company's agent, arranges that. I am satisfied that there should be an order against Mr Rangihuna requiring him to take steps, as the company's agent, for it to comply with the payments due to Ms Dickson.

[15] I understood from counsel that she sought an order that Mr Rangihuna is personally liable for the amounts owed to Ms Dickson. However, Ms Dickson's employer was the company and the earlier judgment and orders were against the company only. The compliance order against Mr Rangihuna does not make him personally liable on debt recovery processes for the debts of the company.

[16] Although an order was sought against Mr Rangihuna personally, he was not originally identified as a respondent. As above, Mr Rangihuna has been served with the proceedings and notices already. Counsel supported

Mr Rangihuna's joinder when I raised the matter during the meeting. The matter currently before the Authority can be more effectually and fairly disposed of by joining Mr Rangihuna personally as a party to these proceedings. Being subject to an order, Mr Rangihuna should have the status and rights of a party. Mr Rangihuna is added as second respondent.

## Interest

[17] Interest is now sought. The present matter involves the recovery of money. I have power under clause 11 of Schedule 2 to the [Employment Relations Act 2000](#) to order interest, calculated in accordance with Schedule 2 of the [Interest on Money Claims Act 2016](#).

[18] Counsel referred me to the Interest of Use of Money Claims Act 2016. Section 19 prohibits an award of interest under the Act on an amount that is a penalty or in the nature of a penalty. I am not able to include the unpaid penalties of \$600.00 in the application for interest. Discounting the penalties leaves as the sum of \$19,388.76 as the initial amount.

[19] Interest from 9 June 2021 or earlier was sought. However, the payments should have been made to Ms Dickson by 9 July 2021. Grounds for the present application for a compliance order to recover money only arose once the company defaulted on the obligation to pay by 9 July 2021. I consider that I power in the present matter to fix 10 July 2021 (the first day of default), as the date from which liability for interest commenced. The end date I fix as the date for payment – Friday 24 September 2021.

[20] There will be an order that Starting in Fencourt Limited pays interest of \$40.05, in addition to the amounts required by effect of the compliance order.

## Costs

[21] Costs are sought on this application. Starting in Fencourt Limited has caused Ms Dickson to incur additional legal costs. I am asked to award costs of \$1,587.00 plus the lodgement fee of \$71.56, a total of \$1,658.56. It would be unfair to allow the company's failure to comply with the earlier orders to cause Ms Dickson additional legal costs. There will be an order of costs of \$1,658.56.

## Note

[22] Starting in Fencourt Limited and Mr Rangihuna should note the very serious consequences they risk if they fail to comply with the orders made under [s 137](#) of the [Employment Relations Act 2000](#). A copy of s 140 of the Act is attached for their information.

Philip Cheyne

Member of the Employment Relations Authority