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Dogan v Switch On Limited (Auckland) [2011] NZERA 908; [2011] NZERA Auckland 417 (22 September 2011)

Last Updated: 22 April 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 417
5325465

BETWEEN TAYLAN DOGAN Applicant

AND SWITCH ON LIMITED Respondent

Member of Authority: Rachel Larmer

Representatives: Mark Nutsford, Advocate for Applicant

Tuncer Sakgun, Director of Respondent Investigation Meeting: 22 September 2011 at Auckland Determination: 22 September 2011

CONSENT DETERMINATION OF THE AUTHORITY

A By agreement, Switch On Limited is ordered to pay Taylan Dogan the money it owes him under the Record of Settlement (“RoS”) between the parties dated 19 June 2009. However, the payment arrangements in the RoS are varied as per the repayment plan set out in this determination.

B Any breach of the agreed payment terms in this consent determination will result in Switch On Limited being required to immediately pay Mr Dogan in one lump sum the full amount outstanding.

B Switch On Limited is ordered to add to the amount it owes Mr

Dogan under the Record of Settlement dated 19 June 2009: (i) \$600 as a contribution towards his legal costs; and (ii) \$71.56 as reimbursement of his filing fee. Employment Relationship Problem

[1] Mr Dogan has sought an order that Switch On Limited comply with a settlement agreement between the parties.

[2] The respondent did not file a Statement in Reply.

[3] The Amended Statement of Problem and the Notice of Hearing were both personally served on Mr Tuncer Sakgun, the sole director of Switch On Limited, at its registered office.

[4] Mr Sakgun said he had overlooked filing a Statement in Reply because he was busy with other matters but had attended the investigation meeting today because he wanted to be heard. Because no Statement in Reply was filed within time, the respondent may only defend this application with the leave of the Authority.

[5] I heard evidence under affirmation from Mr Sakgun and in light of his co- operation with my investigation this morning, I granted the respondent leave to appear.

Background

[6] On 12 March 2009 Mr Dogan filed a wage arrears claim against the respondent. The Authority initially referred the parties

to mediation, which the respondent refused to attend. The parties were then directed to mediation.

[7] The parties attended mediation provided by a mediator from the Department of Labour Mediation Services on 19 June 2009. Mr Tuncer Sakgun attended on behalf of the respondent.

[8] The parties entered into a s.149 Record of Settlement (“RoS”) under the [Employment Relations Act 2000](#) (“the Act”). Under this RoS Mr Dogan agreed to withdraw his wage arrears claim against Switch On Limited and it agreed to pay him \$10,000 under [s.123\(1\)\(c\)\(i\)](#) of the Act by direct credit into his nominated bank account at the rate of \$300 per month.

[9] The RoS contained the following term:

“Should the respondent default on the payments as outlined above the full amount will immediately become due and payable.”

Breach of RoS

[10] Mr Dogan is currently in Turkey. He provided a signed written statement in advance of the investigation meeting today and, with the prior leave of the Authority, he attended the investigation meeting today by telephone. Mr Dogan gave evidence under affirmation during which he confirmed the matters referred to in his written statement dated 14 September 2011.

[11] Mr Dogan said he had not received any payments at all and Mr Skagun agreed that was correct.

[12] Mr Dogan told me that the delay in applying for a compliance order was due to him losing contact with Mr Skagun which hampered efforts to serve the proceedings on him. I also heard evidence under affirmation from Mr Nutsford who explained the delay in applying for compliance with the RoS. Proceedings were reactivated shortly after Mr Skagun updated his contact details on the New Zealand Companies website.

Consent of parties

[13] This matter was fully investigated. Mr Skagun explained the respondent had been experiencing financial difficulties but that he was confident its financial situation was turning around. He offered to pay the outstanding amount by instalments and Mr Dogan (somewhat reluctantly given the history of this matter) agreed to accept his proposed payment plan.

[14] The parties asked me to record their agreement in a consent determination.

Orders

[15] I make the following orders as per the parties’ agreement:

a. The respondent is to pay the applicant the full amount he is owed under the terms of the RoS dated 19 June 2011;

b. The respondent is also to pay the applicant;

i. \$600 towards the costs of this application; and ii. \$71.56 to reimburse him for his filing fee.

c. The amount in (b) above is to be added to the total amount owed in (a)

above. By agreement the respondent now owes the applicant a total of

\$10,671.56.

d. The total amount in (c) above is to be repaid by the respondent to the applicant at the following agreed rate:

i. The respondent (via Mr Skagun) will deposit \$50 cash into the applicant’s nominated bank account (details of which were provided during the investigation meeting) today. If the respondent needs to check the applicant’s bank account details it can contact Mr Nutsford or the Authority who both have recorded the necessary details on their files;

ii. The respondent will ensure that at least \$50 has been paid in to the applicant’s bank account on each of the following dates - 30

September 2011; 7 October 2011; 14 October 2011; and 21

October 2011;

iii. The respondent will ensure that at least \$100 has been paid into the applicant’s bank account on each of the following dates –

28 October 2011; 4 November 2011; 11 November 2011; 18

November 2011; and 25 November 2011;

iv. The respondent will ensure that at least \$150 has been paid into the applicant's bank account on each of the following dates – 2

December 2011; 9 December 2011; 16 December 2011 and 23

December 2011;

v. The respondent will ensure that at least \$200 has been paid into the applicant's bank account each and every Friday from 30

December 2011 until the full amount of the amount outstanding has been repaid in full;

vi. Failure to adhere to this agreed payment plan will result in the full amount of any money outstanding under clause (c) above owing becoming repayable by the respondent immediately in one lump sum;

vii. Any breach of the above repayment terms entitles the applicant to apply to the Employment Court for an enforcement order seeking immediate repayment of the full amount of any money outstanding under clause (c) above;

viii. The respondent undertakes to repay the full amount outstanding (under clause (c) above) to the applicant earlier, and to make more than the minimum payments set out above, as its financial circumstances permit.

Rachel Larmer

Member of the Employment Relations Authority

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