

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 90
5549517

BETWEEN

EMMA KRISTINA
ERIKSSON
Applicant

A N D

PROVISION SECURITY
LIMITED
Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person
M J Robinson, Counsel for Respondent

Investigation Meeting: On the papers

Submissions Received: 29 October 2015 from Applicant
15 October 2015 from Respondent

Date of Determination: 22 March 2016

DETERMINATION OF THE AUTHORITY

A. The application for a compliance order is dismissed.

B. Each party shall meet their own costs.

Employment relationship problem

[1] Ms Eriksson applied for an order that the respondent comply with the Record of Settlement pursuant to s.149 of the Employment Relations Act 2000 (the Act). The alleged breach of the settlement agreement was the failure to provide an original certificate of employment to Ms Eriksson on or before 10 October 2014.

[2] Ms Eriksson accepts that on 20 October 2014 the respondent's solicitors sent an email copy of the certificate of service to her. The original was to be posted to a PO Box address but was never received by Ms Eriksson.

[3] Ms Eriksson wished to receive the original copy and sent several emails to the mediator. The mediator was unable to assist and referred her to the Authority.

[4] Ms Eriksson applied to the Authority on 9 February 2015 for a compliance order. The respondent filed a statement in reply stating that it had now sent another signed certificate of service to Ms Eriksson which she has confirmed to have received.

[5] Ms Eriksson now no longer seeks a compliance order. She only seeks to recover her costs.

Determination

[6] I decline to make any award of costs. As indicated to Ms Eriksson in my previous Minute¹, there is no basis for costs to be awarded given no hearing or compliance order was required.

[7] I also consider there was no actionable breach of the settlement agreement by non-provision of an original employment certificate. The agreement does not require Provision Security Limited post the original certificate of employment to Ms Eriksson. It simply states "*Provision Security Limited shall provide Emma Kristina Eriksson on or before 10th October 2014 with a certificate of employment*".

[8] There was a breach of the settlement agreement by the late provision of the employment certificate on 20 October 2014 by email from the respondent's solicitors. However there is no action for penalty before me. Even if there was that breach does not meet the tests for any award of a penalty.

[9] Accordingly the application for a compliance order is dismissed. Both parties shall meet their own costs.

[10] This determination, made on the papers, has been issued outside the statutory period of three months after receiving the last submissions from one of the parties. I record that when I advised the Chief of the Authority that this would likely occur he decided, as he was permitted by s.174C(4) of the Act to do, that exceptional

¹ Minute of the Authority 13 October 2015

circumstances existed for providing the written determination of the Authority's findings later than the latest date specified in s.174C(3)(b) of the Act.

A handwritten signature in black ink, appearing to read 'T G Tetitaha', with a stylized flourish at the end.

T G Tetitaha
Member of the Employment Relations Authority