

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2011] NZERA Christchurch 172  
5283481

BETWEEN	LOREN ANNE EVANS Applicant
AND	PAUL HARRIS t/a PAUL HARRIS RACING STABLES Respondent

Member of Authority: Philip Cheyne

Representatives: Craig Fletcher, Counsel for Applicant  
No appearance for respondent

Investigation Meeting: 7 November 2011 at Christchurch

Determination: 7 November 2011

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**2<sup>nd</sup> DETERMINATION OF THE AUTHORITY**

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[1] This personal grievance claim was lodged in April 2010. In a statement in reply dated 19 May 2010 the respondent advised the Authority that Paul Harris is the individual behind the business called Paul Harris Racing Stables. I make an order identifying the respondent as Paul Harris t/a Paul Harris Racing Stables.

[2] On 20 August 2010 the parties entered into a record of settlement pursuant to s.149 of the Employment Relations Act 2000. The respondent failed to comply with his obligations under that agreement so the applicant lodged with the Authority an application for a compliance order. The Authority scheduled an investigation meeting for 15 April 2011. On that morning the parties reached an agreement about the resolution of their employment relationship problem and asked the Authority to record their settlement as a consent determination, which the Authority did on 15 April 2011. At their request, there was a non-publication order with respect to the terms agreed by the parties. Since then the applicant has attempted to get the respondent to comply properly with the terms of the consent determination with limited success. The applicant now seeks to enforce the consent determination by compliance order.

**No appearance by the respondent**

[3] I am satisfied that the application, notice of investigation meeting and notice of directions were served on Paul Harris on 19 October 2011.

[4] There was no appearance by Mr Harris at the appointed time this morning. I waited for about 15 minutes but there was still no appearance. There being no good reason shown for this non-appearance I decided to proceed with the investigation meeting.

**Breach of consent determination**

[5] On the evidence of Ms Evans I am satisfied that Mr Harris has failed to comply with the terms of the consent determination dated 15 April 2011. To the extent that there was compliance Mr Harris paid less than was required and later than was required under the consent determination. Taking the partial compliance into account, Mr Harris still owes Ms Evans \$2,500.00. That should have been paid no later than 29 May 2011. It remains unpaid.

**Penalty**

[6] A penalty is claimed but there is a difficulty. As noted the original settlement was recorded pursuant to s.149 of the Employment Relations Act 2000. To paraphrase, s.149(3) provides that such terms are final, binding and enforceable and may not be brought before the Authority except for enforcement purposes. They may not be cancelled under the Contractual Remedies Act 1979. S.149(4) says that a person who breaches agreed terms of settlement is liable to a penalty. However, here, the failure to comply with the s.149 record of settlement was effectively disposed of by the terms of the consent determination. What is sought by the applicant is a penalty for the respondent's failure to comply with the consent determination. While I can understand her frustration, there is no statutory provision that makes a person who fails to comply with a consent determination liable to a penalty for that failure. It follows that there can be no penalty imposed.

**Orders**

[7] Pursuant to s. 137(1)(b) of the Employment Relations Act 2000 Mr Harris is to pay Ms Evans \$2,500.00 (without deduction) within 14 days of the service on him of this determination. The Authority will arrange service.

[8] There is a claim for interest. Mr Harris must pay Ms Evans interest at the rate of 5% per annum starting on 30 May 2011 until the sum is paid in full.

[9] Costs on this application are sought. There is no reason for Ms Evans to have to carry any of the costs of enforcement. I am told that the fee to her for this work will be \$420.00. In addition there will be the lodgement fee of \$71.56. Mr Harris is to pay costs of \$491.56 to Ms Evans.

**Consequences of non-compliance**

[10] Annexed to this determination is an extract from s.140 of the Employment Relations Act 2000 pointing out the consequences of non-compliance with this compliance order.

Philip Cheyne  
Member of the Employment Relations Authority