

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2022] NZERA 123
3156181

BETWEEN HARDIK GEDIYA
Applicant

AND KARAN SHARDA
Respondent

Member of Authority: Robin Arthur

Representatives: Nathan Santesso, advocate for the Applicant
Respondent in person

Investigation: By telephone conference on 1 April 2022

Determination: 4 April 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This determination makes orders for Karan Sharda to complete payments due to Hardik Gediya and his representatives by dates set in a schedule of instalments agreed in a telephone conference held with Mr Sharda and Mr Gediya's representative on 1 April 2022.

[2] The need for this arrangement arises from the failure of Sharda Transport Limited and Mr Sharda to complete payments due under a settlement agreement reached with Mr Gediya in April 2020 and certified by a Ministry of Business mediator under s 149 of the Employment Relations Act 2000 (the Act).

[3] This failure has already been the subject of an Authority determination issued on 11 June 2021.¹ At that time three sums were ordered to be paid within 14 days:

- (a) \$5,324.00 due to Mr Gediya under the settlement agreement; and

¹ *Gediya v Sharda Transport Limited & Sharda* [2021] NZERA 249.

- (b) \$1,341.64 due to his representative, Nathan Santesso, under the terms of the settlement agreement; and.
- (c) \$1,071.56 due to his representative, Alexander Brown, as an award of costs and expenses for the enforcement application that led to the June 2021 determination.

[4] STL and Mr Sharda were also ordered to pay a penalty of \$2,000 for breach of agreed terms of a certified settlement agreement.

[5] By the time of the 1 April 2022 telephone conference only a small portion of those sums due to Mr Gediya and his representatives had been paid. The amounts due for payment were agreed to be:

- (a) \$5,122.00 owed to Mr Gediya; and
- (b) \$998.36 owed to Mr Santesso, comprising costs of \$926.80 and reimbursement of an Authority filing fee of \$71.56; and
- (c) \$871.56 due to Mr Brown.

[6] Mr Sharda said STL had not been able to pay because the company had lost contracts and he had a difficult time personally during the Covid-19 pandemic, relying most recently on Work and Income benefits to meet his living costs.

[7] Under a term of the April 2020 settlement agreement STL and Mr Sharda were jointly and severally liable for payment of the amounts due under it. Mr Sharda accepted he was now personally responsible for completing those payments. He advised he had recently secured new employment, starting this month, and he expected to be able to pay the remaining amounts if a suitable instalment plan could be agreed.

[8] During the call Mr Sharda and Mr Gediya's representative agreed that payments to Mr Gediya should be prioritised in any instalment arrangements and Mr Sharda would make payments directly to each person due money rather than to any one of them for distribution to the others.

[9] From that discussion an instalment plan, set out in detail below, was agreed. It comprises weekly payments of \$150 to Mr Gediya, with one larger instalment in late May 2022 of \$2,000, and payment of single sums to Mr Santesso and to Mr Brown in late July 2022.

[10] By this determination payment of those sums are now orders of the Authority. Failure to pay them would amount to further breaches of the original settlement agreement and further failure to comply with orders of the Authority. Such failures could result in further enforcement action in the District Court.²

Order for payments

[11] Mr Sharda must pay the outstanding sum of \$5,122 to Mr Gediya in the instalments and by no later than the dates set out in the following schedule:

Date payment due	Amount	Amount then remaining due
21 April 2022	\$150	\$4,972
28 April 2022	\$150	\$4,822
5 May 2022	\$150	\$4,672
12 May 2022	\$150	\$4,522
19 May 2022	\$150	\$4,372
26 May 2022	\$2,000	\$2,372
2 June 2022	\$150	\$2,222
9 June 2022	\$150	\$2,072
16 June 2022	\$150	\$1,922
23 June 2022	\$150	\$1,772
30 June 2022	\$150	\$1,622
7 July 2022	\$150	\$1,472
14 July 2022	\$150	\$1,322
21 July 2022	\$150	\$1,172
28 July 2022	\$150	\$1,022
4 August 2022	\$150	\$872
11 August 2022	\$150	\$722
18 August 2022	\$150	\$572
25 August 2022	\$150	\$422
1 September 2022	\$150	\$272
8 September 2022	\$150	\$122
15 September 2022	\$122	\$0

² Employment Relations Act 2000, s 141(1).

[12] Mr Sharda must pay the sum of \$998.36 to Mr Santesso by no later than 21 July 2022.

[13] Mr Sharda must pay the sum of \$871.56 to Mr Brown also by no later than 21 July 2022.

[14] Because of the history of delay in this matter, I also make the following order in relation to the prospect that any of part of the agreement instalment schedule is not complied with by Mr Sharda. If any payment in these orders is not made by any of the due dates set, all remaining sums due to Mr Gediya, Mr Santesso and Mr Brown become payable in full from the date of any such non-payment. The effect of this order would be that Mr Gediya could then elect to commence further enforcement action for payment of those amounts in the District Court. Mr Sharda would also be liable in the Authority for further penalties for further breach of the terms of the original settlement agreement.

[15] In conclusion I record that, in agreeing to this instalment plan, Mr Gediya also withdrew claims for interest and a further penalty that had been made in his application to the Authority. Through his representative, Mr Gediya has agreed to an instalment plan which gives Mr Sharda a further fair and generous opportunity to meet the final, binding and enforceable obligations entered into in the settlement agreement made some two years ago.

Robin Arthur
Member of the Employment Relations Authority