



**The investigation process**

[4] I am satisfied from the administration file that an amended statement of problem was served on the registered office of Crisp NZ which is the same address as the address for service.

[5] I am satisfied that Crisp NZ was advised that there was to be a case management conference but failed to attend. A Notice of Direction and Notice of Investigation Meeting with advice for connection to the investigation meeting was also served on the registered office of the company following the case management conference.

[6] Crisp NZ did not attend at the investigation meeting and no good reason was advanced for the failure to do so. The Authority proceeded under clause 12 of the second schedule to the Act to hear evidence from Mr Glasgow.

**The issues**

[7] The Authority needs to determine the following issues:

- (a) Has there been a breach of the settlement agreement?
- (b) If there has been a breach of the settlement agreement should the Authority order compliance with the settlement agreement?
- (c) Should there be an order for costs and if so in what amount?

**Has there been a breach of the settlement agreement**

[8] Mr Glasgow says that there was a breach of clause 2 of the settlement agreement. I prohibit from publication the balance of the settlement agreement.

[9] Clause 2 of the settlement agreement provides:

Crisp NZ Limited shall, without admission of liability, pay Stewart Cameron Glasgow, within 14 days of the date of this agreement, the sum of \$9,000 in terms of the provisions of s 123(1)(c)(i) of the Employment Relations Act 2000. This amount will be paid by way of direct debit.

[10] Mr Glasgow confirmed in his evidence to the Authority that Crisp NZ had failed to comply with that clause and as at the date of the investigation meeting he had not received the sum of \$9,000.

[11] I am satisfied that there has been a breach of the settlement agreement.

**Should the Authority order compliance with the settlement agreement?**

[12] The Authority has the power to order compliance with the settlement agreement under s 137 of the Act.

[13] Crisp NZ agreed to make payment of the sum of \$9000 to Stewart Glasgow within 14 days from the date of the agreement which was 20 May 2021. The breach of clause 2 of the settlement agreement has continued for a lengthy period notwithstanding a number of demands for payment.

[14] It is appropriate to make a compliance order in the circumstances.

[15] I order that Crisp NZ Limited comply with clause 2 of the Record of Settlement dated 20 May 2021 and pay to Stewart Cameron Glasgow the sum of \$9,000 without deduction. The payment is to be made by close of business 21 December 2021.

[16] I record that a failure to comply with the order that the Authority has made under s 137 of the Act may provide a basis for an application to be made by Mr Glasgow to the Employment Court for enforcement of the order. Under s 140 of the Act, where the Court is satisfied that any person has failed to comply with a compliance order made under s 137, the Court may do a number of things. This can include a term of imprisonment not exceeding 3 months, and/or a fine not exceeding \$40,000, and/or an order that the property of the person in default be sequestered.

**Costs**

[17] The Authority has been advised that in enforcing the terms of settlement Mr Glasgow has incurred actual costs in the sum of \$3,189.50 which includes GST and disbursements.

[18] The costs Mr Glasgow has incurred should not have been necessary.

[19] When the Authority considers costs it exercises a discretion. In exercising that discretion it does so in a principled way. Costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct. In the Authority, costs are

usually awarded on the basis of a daily tariff which is currently \$4,500 for the first day. The matter was able to be investigated well within a quarter of a day.

[20] I consider a fair and reasonable award of costs would be quarter of the daily tariff which is \$1,125. Mr Glasgow is also entitled to reimbursement of his filing fee of \$71.56.

[21] I order Crisp NZ Limited to pay to Stewart Cameron Glasgow the sum of \$1,125 for costs and \$71.56 being reimbursement of the filing fee by close of business 21 December 2021.

Helen Doyle  
Member of the Employment Relations Authority