

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2024] NZERA 118  
3254419

BETWEEN                      DAVID GRAY  
   Applicant  
  
A N D                              MATTHEW LAI  
   Respondent

Member of Authority:        Philip Cheyne  
  
Representatives:              Paul Mathews, advocate for the Applicant  
   No appearance by the Respondent  
  
Investigation Meeting:        On the papers  
  
Information and  
Submissions Received:        7 February 2024 from the Applicant  
  
Date of Determination:        29 February 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     In an earlier determination,<sup>1</sup> Matthew Lai was ordered to pay David Gray \$7,500.00 compensation and \$2,280.00 reimbursement to settle Mr Gray's personal grievance. In a further determination, Mr Lai was ordered to pay costs of \$2,321.56.<sup>2</sup>

[2]     Mr Lai challenged the determinations and sought a stay. The Employment Court declined the application to stay the Authority's orders.<sup>3</sup>

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<sup>1</sup> *Gray v Lai* [2022] NZERA 528

<sup>2</sup> *Gray v Lai* [2022] NZERA 560.

<sup>3</sup> *Lai v Gray* [2023] NZEmpC 58.

[3] Mr Gray seeks a compliance order to require Mr Lai to pay the compensation, reimbursement and costs he had been ordered to pay.

### **The Authority's investigation**

[4] The compliance application was lodged on 3 October 2023. The Authority took various steps to serve the application on Mr Lai. Mr Lai did not lodge a statement in reply. The application was then referred to me.

[5] By direction dated 30 January 2024 I considered that the application had been served on Mr Lai, that the matter appeared suitable to be determined on the papers, that Mr Gray should lodge an affidavit, that the affidavit and my directions should be served on Mr Lai and that Mr Lai was to lodge a reply and affidavit(s) in opposition within seven days.

[6] I also directed that service of the above-mentioned documents at the address for service given by Mr Lai in his challenge in the Employment Court would be regarded as service for the purposes of the Authority's directions.

[7] Mr Mathews for Mr Gray served some of the documents at the address for service and the Authority served the remaining document.

[8] The representative for Mr Lai in the Employment Court proceedings advised the Authority that he was not instructed to accept service with respect to the present compliance order application. The Authority acknowledged that communication, but drew the representative's attention to the direction that service at his address was considered service for the purposes of these proceedings.

[9] I am satisfied that Mr Lai has been served in accordance with requirements and the Authority's directions.

[10] Mr Lai has taken no steps to defend the application for a compliance order.

### **A compliance order is appropriate**

[11] Section 137 of the Employment Relations Act 2000 (the Act) gives the Authority power to order compliance where a person has not complied with an order or determination of the Authority.

[12] The Authority's earlier orders were effective as of the dates they were issued. Mr Gray deposes that Mr Lai has not paid any of the amounts ordered. I am satisfied that Mr Lai has not complied with the Authority's orders. Section 137 of the Act therefore applies.

[13] Mr Lai apparently offered to pay \$10.00 per week as a response to the payment demand. The offer was not accepted. Mr Lai has done nothing else to satisfy the orders.

[14] Mr Gray also says that Mr Lai paid \$3,900.00 as the sum ordered by the Court as security for costs "straight away". That calls into question Mr Lai's claimed impecuniosity given as a response to Mr Gray's earlier payment demands.

[15] I am satisfied that a compliance order is appropriate to prevent further non-compliance with the Authority's orders.

### **Compliance Order**

[16] Under s 137 of the Employment Relations Act 2000, Matthew Lai is ordered to comply with the Authority's orders by paying David Gray the following sums by no later than Thursday 28 March 2024:

- (a) compensation of \$7,500.00;
- (b) reimbursement of \$2,280.00; and
- (c) costs of \$2,321.56.

[17] A copy of section 140 of the Employment Relations Act 2000 is attached, to bring to Mr Lai's attention the powers available to the Employment Court on Mr Gray's application, should Mr Lai breach the Authority's compliance order.

### **Costs**

[18] Mr Gray is entitled to costs on the present application. The steps involved a statement of problem, preparation and service of an affidavit and some ancillary attendances. I fix \$500.00 as a reasonable contribution to the costs involved in that work, together with a further \$71.55 to cover the lodgement fee. Matthew Lai is ordered to pay David Gray \$571.55 costs.

**Service**

[19] This determination is served on Mr Lai by sending it to the address for service given by Mr Lai in Employment Court proceedings EMPC 394/2022.

Philip Cheyne  
Member of the Employment Relations Authority