

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2018] NZERA Auckland 311  
3038311

BETWEEN ANNA GRIFFIN  
Applicant

A N D THE ORTHODONTIC  
INSTITUTE AUCKLAND CITY  
LIMITED  
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Max Whitehead, Advocate for Applicant  
Saad Al-Mozany, Director of the Respondent

Investigation Meeting: Determined on the papers

Date of Determination: 10 October 2018

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**DETERMINATION OF THE  
EMPLOYMENT RELATIONS AUTHORITY**

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- A. Within seven (7) days of the date of this determination, the respondent, the Orthodontic Institute Auckland City Limited (“the Institute”) is to pay to Ms Anna Griffin outstanding wages of \$3,712 gross, outstanding holiday pay of \$3,825.97 together with interest on both sums at the rate of 5% per annum from 11 February 2018 until the date of payment.**
- B. Within seven (7) days of the date of this determination, the Institute is to pay to the Authority, for transfer to the Crown bank account penalties of \$10,000 for its breaches of the Wages Protection Act 1983 (WPA) and the Holidays Act 1993 (HA). \$5,000 of the total penalties of \$10,000 are to be paid to Ms Griffin.**

- C. Within seven (7) days of the date of this determination, the Institute is to pay Ms Griffin costs in the sum of \$2,250 together with the filing fee of \$71.56. In addition further costs in respect of the application for compliance order of \$500 together with the filing fee of \$71.56.**

### **Employment Relationship Problem**

[1] By way of determination dated 16 August 2018,<sup>1</sup> the Authority ordered the Institute to pay to Ms Griffin outstanding wages amounting to \$3,712 gross, outstanding holiday pay amounting to \$3,825.97 gross, together with interest on those sums at the rate of 5% per annum from 11 February 2018 until the date of payment.

[2] Penalties in the sum of \$10,000 was also ordered to be paid into the Authority for payment into the Crown bank account in respect of the breaches by the Institute of the WPA and HA.

[3] Ms Griffin has lodged a further application with the Authority because the Institute has not paid the sums ordered to be paid.

### **Application for compliance order**

[4] The new application for compliance order by Ms Griffin was served on the Institute by Courier Post and by way of email. The Institute has not lodged a statement in reply. On 26 September 2018, an email was sent by an Authority officer, to one of the directors of the Institute, Mr Al-Mozany informing him that the statement of problem was served on the Institute on 10 September 2018 and that he had fourteen days from the date of service to file a statement in reply. No statement in reply was lodged in the Authority by the due date by the Institute.

[5] The 26 September 2018 email informed Mr Al - Mozany that if there was no correspondence received from him by 28 September 2018 the matter was to be referred to an Authority member. On Wednesday 26 September 2018, Mr Al-Mozany replied to the Authority by email informing that he would be filing a response “by Friday”. No response has been received by the Authority.

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<sup>1</sup> [2018] NZERA Auckland 258.

[6] I am satisfied that the Authority has made reasonable attempts to bring the new application to the Institute's attention and that the Institute is aware of the proceeding.

[7] Section 137 of the Employment Relations Act 2000 ("the Act") empowers the Authority to order a party to do a specified thing within a specified time when there has been a failure by that party to comply with, inter alia, an order or a determination made under the Act by the Authority.

[8] The Institute has failed to comply with the orders made in the Authority's determination<sup>2</sup> and has failed to file a statement in reply to the application for compliance within the timeframe, despite a reminder by the Authority. It is therefore appropriate to make a compliance order against the Institute under s.137 of the Act.

[9] Within seven (7) days of the date of this determination, the Institute is to pay to Ms Griffin the following gross sums:

- (a) \$3,712 in respect of unpaid wages;
- (b) \$3,825.97 in respect of outstanding holiday pay;
- (c) Interest on the amounts in (a) and (b) above, at the rate of 5% per annum from 11 February 2018 until the date of payment;
- (d) Costs of \$2,250.

[10] I also order the Institute to pay Ms Griffin within seven (7) days of the date of this determination a further sum of \$71.56 in respect of the cost of her lodging this further application for compliance.

[11] I draw to the attention of the parties the right under s.138(6) of the Act of Ms Griffin to apply to the Employment Court for the exercise of its powers under s.140(6) if the Institute fails to comply with the compliance orders made in this determination.

### **Costs**

[12] I order the Institute to pay Ms Griffin the sum of \$500 in relation to costs incurred in respects of the filing of her application for a compliance order together

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<sup>2</sup> Footnote 1

with the filing fee of \$71.56. These sums are to be paid within seven (7) days of the date of this determination.

**Anna Fitzgibbon**

**Member of the Employment Relations Authority**