

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

**Attention is drawn to
an order prohibiting
publication of certain
information in the
determination**

[2025] NZERA 375
3364443

BETWEEN HZZ
 Applicant

AND WFW
 Respondent

Member of Authority: Philip Cheyne

Representatives: Applicant in person
 No appearance for the Respondent

Investigation Meeting: 27 June 2025 in Christchurch

Date of Determination: 27 June 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] HZZ and WFW reached agreed terms of settlement. At their request, the terms were signed by a mediator in accordance with s 149 of the Employment Relations Act 2000.

[2] Compensation was quantified in the settlement but other payments were described as follows: four weeks' wages in lieu of notice, holiday pay at 8% of gross earnings since commencement of the employment and payment for a public holiday. All those amounts were readily quantifiable. Payment was required by 15 May 2024, except the holiday pay which was to be paid in the next pay round. However, WFW paid nothing.

[3] HZZ applied to the Authority to enforce the settlement (the original application). The Authority investigated the problem and in a determination on 23 September 2024 ordered WFW to comply with the settlement by paying HZZ the amounts payable within 14 days. The Authority also ordered WFW to pay costs to HZZ.¹

[4] Despite the Authority's compliance order, WFW paid nothing.

[5] HZZ then commenced civil enforcement action to collect the money. However, a bailiff only collected the quantified amounts (compensation and costs) covered by the agreed terms of settlement, but not the unquantified amounts.

[6] In the present application to the Authority, HZZ seeks a compliance order for payment of the unpaid amounts from the settlement agreement, interest, penalties for breaches of the settlement agreement and penalties and other orders against WFW's director personally.

[7] WFW did not lodge a statement in reply.

Non-publication

[8] The Authority earlier prohibited the publication of the parties' names and any details that would identify them such as the name of the sole director of WFW.²

[9] To avoid undermining that order and independently for similar reasons, I make the same order with respect to the current proceedings.

The Authority's investigation

[10] During a directions conference, I raised various issues with the parties. I was concerned whether the Authority could in substance revisit the problem, given the original application and the earlier determination. But there also appeared to be no proper basis on which WFW could continue to avoid paying the unquantified sums required by the agreed settlement. Nonetheless I fixed a date for an investigation meeting, in case matters were not resolved.

¹ *HZZ v WFW* [2024] NZERA 565.

² *HZZ v WFW*, above n1, at [7].

[11] HZZ appeared and gave evidence under oath.

[12] WFW did not appear. However, towards the end of the investigation meeting, I was told by an Authority Officer that someone for WFW had contacted her to ask about an investigation meeting at midday. The Authority Officer advised the person that the matter had started at 9.30 am and was continuing.³

[13] The meeting finished at 10.30 am. I understand that WFW's director arrived after then.

[14] There was no reason to delay the investigation given the circumstances, including WFW's non-compliance with the agreed terms of settlement, its failure to comply with the Authority's earlier order and its failure to lodge a statement in reply.

Analysis

[15] It is common ground that WFW has now paid everything required under the agreed terms of settlement and the earlier determination. The unquantified amounts were paid shortly after the case management conference. However, other aspects of the present claim remain for determination.

[16] There is a claim for WFW's director to be held personally liable under s 142W(1)(a) of the Employment Relations Act 2000. As above, everything has now been paid. In any event, the provisions of Part 9A of the ERA do not apply here. Section 149 of the ERA means that HZZ may enforce the settlement in the Authority through a compliance order under s 137 and a penalty under s 133(1)(b).⁴ Enforcement options do not include resort to the provisions of Part 9A.

[17] There is a claim for penalties against the director under s 142W(1)(a) as a person who aided, abetted, counselled and procured the breach of the agreed settlement. As above, the provisions of Part 9A do not apply.

[18] Interest is claimed on the outstanding payments from 15 May 2024 to final determination. The Authority has power to order interest in any matter involving the recovery of any money.⁵ However, assuming the present application could be regarded

³ I am satisfied from the file that WFW was served with the notice of meeting showing the start time as 9.30 am.

⁴ Employment Relations Act 2000 s 149(4) and s 151(1).

⁵ Employment Relations Act 2000, Schedule 2 cl 11.

as a matter involving the recovery of money, the claim for interest must be dismissed for the following reason.

[19] Fundamentally, in this application HZZ repeats and is seeking to add to his claims under file number 3300420, but they were investigated and determined in 2024.⁶

[20] Claims cannot be undertaken by instalments. An applicant must bring all their claims on a subject together in the one claim.⁷

[21] In the original application, HZZ asked the Authority to enforce the settlement agreement. During the case management conference for that application HZZ asked about penalties. He was told that an amended statement of problem would be required but he advised the Member that he would proceed without doing that.⁸ HZZ could have sought penalties against WFW and/or its director in the original application, but did not. He cannot revisit that choice by making this further claim in the Authority.

[22] HZZ could also have sought interest in the original application, but did not.

[23] Prior to the present application, HZZ already had a final judicial determination to enforce the record of settlement by compliance order under s 137 of the ERA. His remedy for WFW's failure to comply with that order was to apply to the Employment Court to exercise its powers under s 140(6) of the ERA. Alternatively, if he was dissatisfied with the Authority's determination, HZZ had the right to challenge it to the Employment Court under s 179 of the ERA. HZZ cannot seek a second compliance order from the Authority as a means of remedying continued non-compliance with the agreed terms of settlement despite the first compliance order.

[24] HZZ told me that WFW has still not provided the certificate of service covered by clause 8 of the agreed terms of settlement. Unfortunately, I cannot do any more than was done originally, without reopening the earlier investigation.

⁶ *HZZ v WFW*, above n 1.

⁷ *Faloon v The Planning Tribunal at Wellington* [2020] NZCA 170 at [2].

⁸ Directions of the Authority, 19 August 2024.

Conclusion

[25] HZZ's claims are dismissed.

[26] HZZ received payment of the unquantified amounts after this claim was lodged. It should not have been necessary for HZZ to lodge this application after the original determination to obtain full payment. HZZ incurred costs in doing that. In the circumstances, I am persuaded that HZZ is entitled to a contribution to modest costs on this application. I fix costs at \$1,000.00 plus the lodgement fee of \$71.55, a total of \$1,071.55.

[27] WFW is to pay HZZ costs of \$1,071.55, payable immediately.

Philip Cheyne
Member of the Employment Relations Authority