

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 446
3210479

BETWEEN CRAIG HAMILTON
Applicant

AND AFROZ KUTTI
Respondent

Member of Authority: Marija Urlich
Representatives: Applicant in person
Respondent in person
Investigation Meeting: 31 July and 14 August 2023
Determination: 15 August 2023

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In a determination dated 9 June 2014 (the primary determination) the Authority found Mr Kutti had unjustifiably dismissed Mr Hamilton. ¹ Mr Kutti was ordered to pay Mr Hamilton a total of \$16,550 in lost wages, compensatory damages, arrears of wages and holiday pay.

[2] In an application lodged earlier this year Mr Hamilton seeks to enforce the orders made by the Authority in 2014 by way of compliance order.² He also seeks an order that interest is paid on the outstanding sum.

[3] Mr Kutti says he has been paying the ordered sum off at the rate of \$50 per week as he agreed with Mr Hamilton.

¹ *Craig Hamilton v Afroz Kutti* [2014] NZERA 224.

² Employment Relations Act 2000, s 137.

The Authority's investigation

[4] Mr Hamilton and Mr Kutti attended an investigation meeting with the Authority on 31 July 2023. Mr Hamilton said he wishes to enforce the order because the payment rate of \$50 per week is not sufficient and interest should be calculated on the outstanding amount until it is paid in full. Mr Kutti said it will be difficult for him to pay the total amount to Mr Hamilton in a lump sum. The investigation was adjourned for the parties to consider their respective positions further and to provide further relevant information to the Authority including the sum outstanding and information as to Mr Kutti's financial position if he seeks an order for payment by instalment under s 138 of the Act.³

[5] On 14 August the investigation meeting resumed. Mr Kutti attended the investigation meeting by telephone with leave of the Authority.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all information received.

Compliance order against Afroz Kutti

[7] Mr Hamilton confirmed Mr Kutti has paid him a total of \$3,750.00 in weekly payments of \$50 since the primary determination was issued and that the balance of \$12,800.00 remains outstanding. Mr Kutti confirmed this is the case. The parties told the Authority the payment schedule of \$50 per week is the result of an informal arrangement between them. Mr Hamilton now seeks to enforce the balance of the award.

[8] Mr Kutti does not suggest Mr Hamilton is bound by that arrangement and is grateful that Mr Hamilton has not sought to enforce the total sum sooner. If the parties had wished to be bound by the arrangement, they could have formalised their agreement by for example, entering a record of settlement. This has not occurred and I am satisfied

³ Authority direction 7 August 2023.

there is no lawful basis to bind the parties to the \$50 per week payment rate. Mr Hamilton has been deprived of the payment of the total sum awarded in his favour for a number of years now and Mr Kutti could be said to have enjoyed the benefit of that deferral.

[9] Section 137(1)(b) of the Act empowers the Authority to order a party to comply with any determination made under this Act by the Authority.

[10] There has been a failure to comply with the primary determination and it is appropriate to exercise my discretion under s 137(1)(b) of the Act to order compliance with the awards contained therein. Mr Hamilton's application for a compliance order is granted.

Payment by instalments

[11] Section 138(4A) of the Act provides the Authority may order remedies awarded to settle a personal grievance, arrears and penalties are paid by instalment to the employee if the employer's financial position so requires.

[12] Mr Kutti told the Authority his financial position is not strong – that he has one shop, his income is not great and he has some limitations on what he can earn and borrow, including that he has a large family and a lot of outgoings including obligations to extended family. He said he has discussed the matter with his wife and believes he can afford to pay Mr Hamilton by instalments of \$100 per week. Mr Hamilton opposes an instalment plan, he says the part payment has gone on for long enough.

[13] The information before the Authority in support of Mr Kutti's financial position is not significant but it is accepted it will be difficult for him to pay the balance in a lump sum. It is accepted Mr Kutti's financial position requires an order for instalment payments. The outstanding balance of awards made in Mr Hamilton's favour are substantial and include wage and holiday pay arrears. At the proposed rate it will take Mr Kutti a further 2 ½ years to pay Mr Hamilton the balance of the orders in his favour which in my assessment is not reasonable particularly given the length of time Mr Kutti has had to date to pay the ordered sums.

[14] On the information before the Authority the following instalment plan is reasonable and is ordered:⁴

- (i) Mr Kutti is to pay Mr Hamilton \$1,000.00 without deduction on 14 September 2023; and
- (ii) he is to continue to make payments at the rate of \$1,000.00 on the 14th day of each successive month with the final payment being \$800.00 until the outstanding balance of \$12,800.00 is paid in full.

[15] The Authority has the power to award interest under clause 11 of the Second Schedule of the Act. Interest is to reimburse someone for the loss of use of monies to which there is an established entitlement. In the event Mr Kutti fails to comply with the payment instalment plan as ordered Mr Hamilton is able to recover interest on the outstanding amount from date of default and Mr Kutti is liable to calculate, using the civil debt interest calculator, and pay Mr Hamilton interest from the date of default until the outstanding balance is paid in full.⁵

[16] If Mr Kutti fails to comply with this compliance order Mr Hamilton may apply to the court for it to exercise its powers under s 140(6) of the Act.

Outcome

[17] Afroz Kutti is ordered to pay Craig Hamilton \$12,800.00 in accordance with the payment schedule set out at [14] above.

Filing fee

[18] The filing fee of \$71.55 is an amount Mr Hamilton can reasonably recover from Mr Kutti. Afroz Kutti is to pay the sum of \$71.55 to Craig Hamilton within 21 days of the date of this determination.

Marija Urlich
Member of the Employment Relations Authority

⁴ Employment Relations Act 2000, s 138(4A).

⁵ www.justice.govt.nz/fines/civil-debt-interest-calculator