

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 87/09  
5158489

BETWEEN                      YVETTE HARTLEY  
   Applicant  
  
AND                                BE GORGEOUS NEW  
   ZEALAND LIMITED  
   Respondent

Member of Authority:      P R Stapp  
  
Representatives:            David Patten for Applicant  
   No Appearance for Respondent  
  
Investigation Meeting:      18 June 2009 at Wellington  
  
Determination:              18 June 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

- [1]      The applicant has filed for compliance of a mediated settlement.
- [2]      There has been no reply from the respondent, Be Gorgeous N Z Limited.

**Non appearance of the respondent**

[3]      There has been no appearance for the respondent. Before the investigation meeting the respondent was contacted, and no good reason could be ascertained why no one for the respondent had not appeared. No prior details of any difficulties or circumstances had been provided by the respondent. Notice was properly served of the date and time of the investigation meeting, and previously all papers and documents had been served. The respondent was given an extension to reply, but did

not do so. The respondent has not entered into any constructive correspondence with the Authority.

[4] Therefore it was my decision to proceed and act fully in the matter as if the respondent had appeared or been represented under clause 12 of Schedule 2 of the employment Relations Act 2000.

### **The facts**

[5] On 8 October 2008 Ms Hartley filed a statement of problem against the respondent in other proceedings. In those proceedings Ms Hartley claimed that her termination of employment was unjustified. The respondent filed a statement in reply on 21 October 2008 to that application. The Authority directed the parties to mediation to be provided by the Department of Labour.

[6] Mediation took place for those proceedings on 11 December 2008 and settled the employment relationship problem between the parties. A record of settlement was signed and initialled by the parties and the mediator signed off the record of settlement. A copy of that settlement has been produced.

[7] The record of settlement included a clause as follows:

*The Respondent will further and upon receipt of a suitable invoice pay by way of direct credit the Applicant's legal fees of \$1,500 plus GST, such fees to be paid by 31<sup>st</sup> January 2009.*

[8] On 17 December 2008 an invoice was sent to the respondent, and sent to the respondent's counsel. No payment was made. In February 2009 the respondent's counsel was advised by Mr Patten of the non payment. The respondent's counsel was requested to follow the matter up by Mr Patten. Another account was sent to the respondent's counsel by Mr Patten seeking the payment of the invoice. The respondent's counsel undertook to remind the respondent of the liability to pay as agreed.

[9] The account was still outstanding on 19 March 2009 and there was no response. The payment has still not been made. The application for compliance was filed in a statement of problem on 7 April 2009.

### **Determination and orders of the Authority**

[10] I have no hesitation to make an order for compliance because the respondent has not honoured an enforceable agreement reached in mediation, demonstrated by the record of settlement signed off by the mediator from the Department of Labour. There has been no explanation from the respondent. Nor has the respondent properly replied to the statement of problem filed in the Authority, despite being given an extension to do so. I conclude that the respondent has fragrantly, deliberately and wilfully failed to comply with a term reached in mediation to pay as requested the applicant's costs for the earlier proceedings. The respondent has not acted in good faith.

[11] I order Be Gorgeous N Z Limited to pay the applicant, Yvette Hartley, the sum of \$1,500 plus GST by 25 June 2009. This is an order for compliance made under ss137 and 138 of the Employment Relations Act 2000

[12] I also impose a penalty under s 149 (4) of the Employment Relations Act 2000 for the respondent's breach of the agreed settlement reached and recorded in mediation. I am satisfied that the penalty was commenced within 12 months of the date of the cause of action: s 135 (5) of the Act. The sum was due on 31 January 2009. The application for compliance was made on 7 April 2009. I order that Be Gorgeous New Zealand Limited pay a penalty of \$1,000 and that this sum be paid to the Crown under s 136 (1) of the Act for the respondent's failure to comply. Therefore, I require Be Gorgeous N Z Limited to pay \$1,000 to the Employment Relations Authority at the Authority's Wellington address and for the Authority to pay the sum to the Crown bank account: s 136 (2) of the Act.

[13] Further, I order Be Gorgeous N Z Limited to pay Yvette Hartley \$1,050 plus GST as a contribution towards her costs and the \$70 filing fee in enforcing the mediated agreement, that should have been entirely unnecessary. Ms Hartley has

been put to unnecessary cost by the respondent over the enforcement of her right to have the settlement complied with.

[14] I also put Be Gorgeous N Z Limited on notice that any failure to comply with the order for enforcement by 25 June 2009 could mean that the order is enforced with a certificate of determination and the help of the bailiffs from the District Court under s 141 of the Act, or the applicant could apply to the Employment Court for enforcement under s 138 (6) of the Act that could include any defence being struck out and/or a fine and/or the sequestration of property pursuant to s 146 (6) of the Act.

P R Stapp  
Member of the Authority