

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 191
3030035

BETWEEN BLASE KYLE JAMES HENSON
Applicant

A N D TKO HOLDINGS LIMITED
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Applicant in person
Kohan Wilson, Director of the Respondent

Investigation Meeting: 18 June 2018 at Auckland by telephone conference

Submissions Received: Orally by both parties on 18 June 2018

Date of Determination: 18 June 2018

**ORAL DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

The Investigation Meeting

[1] The applicant, Mr Blasé Henson, and Mr Kohan Wilson, Director for TKO Holdings Limited (TKO), agreed for the investigation meeting to be held by way of telephone conference. The telephone conference took place on Monday, 18 June 2018.

[2] As allowed under s.174 of the Employment Relations Act 2000 (the Act), this Determination does not set out all of the evidence; relevant facts and legal issues are set out along with the Authority's conclusions.

Employment Relationship Problem

[3] On 10 April 2018, a Record of Settlement (the Settlement) was signed under s.149 of the Act. The applicant, Mr Henson, and the respondent, TKO, were parties to the Settlement. The Settlement was signed by Mr Henson and on behalf of TKO.

[4] The Settlement was signed by a mediator employed by the Ministry of Business, Innovation and Employment (MBIE) and certified on 10 April 2018.

Issue

[5] The issue brought to the Authority by Mr Henson relates to non-payment by TKO of a sum of money agreed to be paid by it to Mr Henson under the settlement.

[6] Mr Henson seeks payment of moneys owing under the Settlement immediately. Mr Henson also seeks reimbursement of the \$71.56 filing fee. Mr Wilson for TKO does not dispute that TKO owes money to Mr Henson under the settlement. However, he states that TKO is not in a financial position to pay this in a lump sum.

Settlement agreement

[7] The Settlement states:

TKO HOLDINGS LIMITED shall, without admission of liability, pay Blasé Kyle James Henson, within 21 days of the date of this agreement, the sum of \$3,000 in terms of the provisions of s.123(1)(c)(i) of the Employment Relations Act 2000. This amount will be paid by way of direct credit.

[8] The Settlement was certified under s.149 of the Act by the mediator. That certification confirmed that, before signing the agreement, the parties were advised and accepted they understood the effect of s.149(3) of the Act which states that the agreed terms of settlement:

- is final and binding on and enforceable; and
- could not be cancelled;
- could not be brought before the Authority or the court for review or appeal, except for the purposes of enforcing those terms.

[9] On 17 May 2018, Mr Henson filed an application seeking payment of moneys due under the Settlement.

[10] Mr Wilson for TKO filed a statement in reply, accepting that moneys were due by TKO to Mr Henson, but that it was unable to pay him in one lump sum.

[11] I am satisfied that TKO has not complied with the terms of the Settlement.

Determination

[12] In the statement in reply, Mr Wilson admits that TKO agreed to pay Mr Henson \$3,000 under the Settlement but had not done so because of its financial situation. Mr Henson did not provide the Authority with a copy of TKO's financial accounts or any other information substantiating the financial situation of TKO. The Authority was informed that one of TKO's customers owed it a significant sum of money and that once that money was received TKO would be able to pay Mr Henson.

[13] The customer in question has owed TKO money since February 2018. TKO was aware of the outstanding debt at the date of the mediation with Mr Henson and at the date of signing off on the Settlement.

[14] I therefore make an order that TKO is to pay Mr Henson within 21 days of the date of this Determination, the sum of \$3,000, being the moneys owing under the Settlement.

[15] This amount is to be paid by TKO directly into Mr Henson's bank account, details of which have been provided.

[16] For the information of TKO, failure to comply with an order such as this one, which is made by the Authority under s.137 of the Act, may provide a basis for an application to be made by Mr Henson to the Employment Court. Where the Court is satisfied that any person has failed to comply with a compliance order under s.137, the Court may, under s.140 of the Act, order remedies, including an order, that the person in default be sentenced to imprisonment for a term not exceeding three months and/or a fine not exceeding \$40,000.

Costs

[17] TKO is to reimburse Mr Henson the Authority's \$71.56 filing fee.

Certificate of Determination

[18] I direct that pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000, Mr Henson be provided with a Certificate of Determination, sealed with the seal of the Authority recording that TKO Holdings Limited is ordered within 21 days of this Determination to pay Mr Henson the sum of \$3,000 and reimbursement of the Authority's filing fee of \$71.56.

Anna Fitzgibbon
Member of the Employment Relations Authority