

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2014] NZERA Christchurch 37  
5411908

BETWEEN HOME IMPROVEMENTS (2003)  
COMPANY LIMITED  
Applicant

AND ANTHONY MCLAUGHLIN  
Respondent

Member of Authority: David Appleton  
Representatives: Hine Mellish, Advocate for Applicant  
Respondent in person  
Investigation Meeting: On the papers  
Submissions received: 17 February 2014 from Applicant  
22 February 2014 from Respondent  
Determination: 27 February 2014

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**DETERMINATION OF THE AUTHORITY**

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**The Respondent is ordered to pay to the Applicant company the sum of \$400 by no later than 4pm on Friday 14 March 2014.**

**Employment relationship problem**

[1] By way of a determination dated 21 October 2013, [2013] NZERA Christchurch 216, the Authority ordered Mr McLaughlin to pay to the applicant the sum of \$600 by no later than Friday, 25 October 2013, pursuant to the terms of a Settlement Agreement entered into between the parties on 2 April 2013. Under the terms of that Settlement Agreement, Mr McLaughlin was to pay to the applicant monthly instalments of \$100 until the total sum of \$1,000 had been paid. At the time of the investigation meeting on 21 October 2013, six of those instalments had fallen

due but none had been paid. The remaining four instalments of \$100 each had not yet fallen due and so could not be the subject of the Authority's determination.

[2] However, in its determination the Authority directed that, if by 1 February 2014 Mr McLaughlin had not paid all or any of the remaining four instalments of \$100 each, the applicant company could apply to the Authority for a further compliance order under the same file number in respect of any outstanding sum, without having to lodge a fresh statement of problem.

[3] By way of an email to the Authority dated 17 February 2014, Ms Mellish advised that the applicant was applying for a further compliance order in the sum of \$400 as Mr McLaughlin had not paid anything in respect of that debt.

[4] The Authority contacted Mr McLaughlin who responded in the following terms:

*Sorry, I cannot afford to pay Hine and Gerald, I have a baby girl and partner to support on a low income, paying them is the least of my concerns as I have no money to give and have to provide for my daughter, I could give them 5 dollars a week maybe?*

[5] In the absence of any denial that the remaining \$400 has not been paid to the applicant company I conclude that Mr McLaughlin has not done so, in further breach of the Settlement Agreement dated 2 April 2013. Being satisfied that the terms of the Settlement Agreement are enforceable by the parties under s.149(3) of the Employment Relations Act 2000 (the Act), I am also satisfied that I am empowered to make a compliance order pursuant to s.137 of the Act in respect of this further breach.

[6] Section 138(4A) of the Act provides as follows:

*If the compliance order relates in whole or in part to the payment to an employee of a sum of money, the Authority may order payment to the employee by instalments, but only if the financial position of the employer requires it.*

[7] Specifically, this section does not provide for the Authority to order payment of a sum of money by a former employee to a former employer of a sum of money by instalments. However, s.138(4)(a) provides that a compliance order of the kind described in s.137(2) of the Act may be subject to such terms and conditions as the Authority thinks fit (including conditions as to the actions of the applicant).

[8] In the case of *Canterbury Hotel etc IUOW v. Goslin t/a The Homestead Rest Home*, LC Christchurch CLC 91/89, 11 December 1989, the Court made an order for the payment of a sum of money ordered by a grievance committee to be paid by way of instalments pursuant to the equivalent provision of the Labour Relations Act 1987 (s.207(5)). Therefore, I believe that s.138(4) of the 2000 Act gives the Authority the power to order compliance by Mr McLaughlin paying the remaining \$400 due by way of instalments.

[9] However, Mr McLaughlin does not provide any detailed evidence of his low income or any other aspects of his financial situation. Furthermore, I do not accept that \$5 per week is a reasonable sum, given that Mr McLaughlin had originally agreed to pay the respondent \$100 a month but had failed to make any payments at all.

[10] Furthermore, Mr McLaughlin has offered no explanation as to why he failed to make the original payments and has played no substantive part in the Authority's proceedings until his communication on 22 February 2014.

[11] Whilst the Authority is not aware of the details behind the dispute between the parties that led to Mr McLaughlin entering into a Settlement Agreement with the applicant company, it is likely that the applicant company compromised its rights by accepting an agreement to be paid \$100 a month. Mr McLaughlin's failure to honour this agreement without giving any explanation (to the Authority at least) does not persuade me to grant a further indulgence to Mr McLaughlin.

### **Order**

[12] Accordingly, I decline to exercise a discretion to order compliance of the Settlement Agreement by way of instalments and I therefore order Mr McLaughlin to pay to Home Improvements (2003) Company Limited the sum of \$400 by no later than 4pm on Friday, 14 March 2014.

David Appleton

Member of the Employment Relations Authority