

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2014] NZERA Wellington 121  
5424963

BETWEEN                      FIONA HUNTER  
   Applicant  
  
AND                                TE AO MARAMA KOHANGA  
   REO  
   Respondent

Member of Authority:        Trish MacKinnon  
  
Representatives:              Jenny Murphy for the Applicant  
   Kelly Coley for the Respondent  
  
Investigation Meeting:        On the papers  
  
Determination:                1 December 2014

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**DETERMINATION OF THE AUTHORITY (2)**

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[1]     In my determination of 23 June 2014 I upheld Ms Hunter's personal grievance for constructive dismissal and awarded her \$9,213.75 gross under s. 123(1)(b) and \$7,000 under s. 123(1)(c)(i) of the Employment Relations Act 2000 (the Act). I encouraged the parties to discuss payment of those sums by instalment in view of the financial circumstances of Te Ao Marama Kohanga Reo (TAMKR). I gave leave for the parties to return to the Authority regarding that matter.

[2]     In a subsequent costs determination of 9 September 2014 I ordered TAMKR to pay costs of \$5,200 to Fiona Hunter and to reimburse her the \$71.56 cost of the Authority filing fee.

[3]     Ms Murphy asks the Authority for an order for payment by instalments to Ms Hunter. Discussions between the parties have not been successful in arranging a payment plan that is acceptable to Ms Hunter. Additionally Ms Murphy seeks interest on the sum awarded and the sum of \$210 in relation to costs incurred in making this application.

[4] Ms Coley has indicated TAMKR is agreeable to the Authority making a decision on Ms Murphy's application on the basis of previously submitted information.

[5] In correspondence between the parties following my determination of 23 June 2013, TAMKR offered to make a lump sum payment of \$6,000 followed by monthly amounts of \$500 until the debt was paid in full. The parties have since informed me that TAMKR made a payment of \$6,000 in July 2014 to Ms Hunter. It has also made monthly payments of \$500 to her in August, September and October 2014.

[6] Ms Murphy has indicated that monthly payments of \$500 are acceptable but says TAMKR should also pay lump sum payments of \$5,000 to Ms Hunter each quarter year when it receives its funding from the National Kohanga Reo Trust.

[7] The Authority has the discretion to order TAMKR to pay Ms Hunter the two remedies noted in paragraph one above by instalments. The discretion can be exercised only if the financial position of the employer requires it.<sup>1</sup> The statutory discretion for the Authority to order costs to be paid by instalment is not explicit. However, the Authority has previously made such orders without challenge.<sup>2</sup>

[8] In my substantive determination of Ms Hunter's claims I accepted accounting evidence of the limited resources of TAMKR. The bulk of its finances are derived from the National Kohanga Reo Trust (the Trust), with smaller amounts coming from parents and fund raising. I am satisfied from the evidence I received in the investigation meeting of 26 and 27 March 2014 that the financial position of TAMKR requires payment by instalments.

[9] Ms Hunter is entitled to receive the monies she has been awarded. At the current rate of repayment TAMKR would not fulfil its debt obligation to her until 2017. That is an unacceptably long period.

[10] I am not satisfied, however, that Ms Murphy's request for TAMKR to make quarterly payments of \$5,000, in addition to the monthly payments of \$500, is reasonable. That would place an excessive financial burden on the kohanga reo which, as I noted in my substantive decision, has few assets and minimal cashflow. A

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<sup>1</sup> Section 123(2) of the Employment Relations Act 2000

<sup>2</sup> For example, *Ng v Whitireia Community Polytechnic* [2007] AA242A/07; *Dallimore v Wholesale buying Ltd* [2012] NZERA Christchurch 172

smaller lump sum payment of \$2,000 per quarter when TAMKR receives its funding from the national body is more manageable and will reduce the repayment period to a more acceptable level.

[11] The power to award interest is discretionary and I decline to order it in this instance as to do so would impose a further financial burden on a respondent whose financial position I have accepted to be limited. It is appropriate that modest costs are awarded in relation to this application.

### **Orders**

[12] I order TAMKR to continue to pay Ms Hunter \$500 per month. In addition to those monthly payments, TAMKR is to pay Ms Hunter \$2000 per quarter, commencing from the date of its next receipt of quarterly funding from the Trust.

[13] TAMKR is also to contribute \$120 to Ms Hunter's costs in relation to this application.

[14] Payments are to continue until all sums awarded by the Authority to Ms Hunter have been paid in full.

Trish MacKinnon  
Member of the Employment Relations Authority