

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 186/10
5299504

BETWEEN BRONWYN IRWIN
 Applicant

AND CALYPSO INNOVATIONS
 LIMITED
 Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
 Garry Walker for Respondent

Investigation Meeting: 23 April 2010 by telephone conference

Determination: 23 April 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Bronwyn Irwin seeks a compliance order requiring Calypso Innovations Limited (CIL) to pay an amount remaining outstanding from a settlement agreement made and recorded under s149 of the Employment Relations Act 2000 (the Act). Ms Irwin also seeks a penalty for breach of the terms of settlement.

[2] The agreement, made on 17 February 2010 and certified by a mediator under s149 of the Act, required CIL to pay a total of \$2500 in five instalments between 3 and 31 March 2010. From the mediator's certification I understand both parties knew the settlement reached was final, binding, enforceable and not subject to change.

[3] As of 1 April 2010 CIL had made only three payments to a total value of \$800. The parties agree \$1700 remains owing under the terms of the agreement.

[4] CIL director Garry Walker replied to Ms Irwin's compliance application by saying further payments would be made to Ms Irwin "*as and when funds become available*".

[5] During the investigation meeting held by telephone conference today Mr Walker said the agreement to pay compensation to Ms Irwin was made in good faith at the time but some expected business revenue had not eventuated. He said the company had ceased trading and the employment of other staff ended by the end of March 2010. While CIL still had some assets, it also had other debtors and intended attending to its debts from sales of assets according to what Mr Walker called the usual rankings, including payments due to other former employees. Ms Irwin believes CIL retains assets which could be sold to meet its obligations to her.

[6] I accept Ms Irwin remains entitled to prompt payment of the amount owed and outstanding to her. A further scheme of instalments is not appropriate given CIL's failure to pay at the times at which it had earlier agreed to do so.

[7] I also accept a penalty is warranted in circumstances where a party has agreed to specific and certain terms for payment under a certified settlement agreement but has not met those terms. In the particular circumstances I consider the penalty should be paid to Ms Irwin: s136 of the Act.

Orders

[8] CIL is ordered to pay the following amounts to Ms Irwin within 14 days of the date of this determination:

- a. \$1700 in compliance with the terms of settlement made on 17 February 2010 (under s137 of the Act); and
- b. \$300 as a penalty for its breach of the terms of settlement (under s149(4), s135(1)(b) and s136 of the Act); and
- c. \$70 in reimbursement of the fee she paid to lodge the application for orders for compliance and a penalty.

[9] I note that should CIL fail to comply with these orders the Act allows for Ms Irwin to take further action. This may comprise either filing these orders in the

District Court for enforcement by the bailiffs (s141 of the Act) or applying to the Employment Court for orders which may include imprisonment, a fine and orders to sequester property of CIL (s138(6) and s140(6) of the Act).

Robin Arthur
Member of the Employment Relations Authority