

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2018] NZERA Wellington 35  
3024121

BETWEEN            TROY JAMES  
                                 Applicant  
  
AND                    CBC (2013) LIMITED  
                                 Respondent

Member of Authority:    M B Loftus  
  
Representatives:        Kelly Coley, Advocate for Applicant  
                                 Craig Bertram, for Respondent  
  
Investigation Meeting:    On the papers  
  
Submissions Received:    4 April and 24 April 2018 from Applicant  
                                 20 April 2018 from Respondent  
  
Determination:         11 May 2018

---

**DETERMINATION OF THE AUTHORITY**

---

[1]    On 14 December 2017 (incorrectly dated 14 December 2016) I issued a consent determination incorporating, as an order of the Authority, various terms agreed between the parties in order to resolve their differences. It was concluded during an investigation meeting held that day.<sup>1</sup>

[2]    The order required the Respondent, CBC (2013) Ltd (CBC), make three payments. They were:

- a.    \$2,000 to Mr James no later than 24 December 2017<sup>2</sup>;
- b.    a contribution of \$1500 plus GST toward Mr James' costs to be paid in three instalments with the first being made no later than 31

---

<sup>1</sup> [2017] NZERA Wellington 132

<sup>2</sup> Compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000

December 2017. This was provided an invoice was proffered which it was; and

c. reimbursement to Mr James of his filing fee in the Authority.

[3] None of the payments have been made and all are now overdue. Mr James therefore seeks an order CBC comply with the determination; that it pay interest; that it incur a penalty; that it pay the cost of this application and reimburse the additional filing fee. Mr James asks the penalty be payable to him as opposed to the Crown.

[4] CBC did not respond to the application within the time required by the regulations.<sup>3</sup> Nor did it participate in a telephone conference held to discuss the claims management and during which a decision was made to address the application on the papers. That said it is clearly aware of both the claim and the outcome of the telephone conference as it did furnish a belated statement in reply which effectively constituted the required submission.

[5] The response essentially reiterates the factual background upon which CBC mounted its defence to the original substantive claim of unjustified dismissal and asserts that in the circumstances Mr James was been fairly treated by virtue of payments already received, namely his wages.

[6] CBC goes on to advise it has ceased trading given it is no longer interested in the risks generated by having to employ staff from a labour pool that comprises *...lazy useless unreliable thieving drug taking dumb dangerous people*.<sup>4</sup> The submission contains other negative observations about the environment in which employment takes place and the system through which its rules are enforced.

[7] Mr James evidence satisfies me the amounts required by the consent determination have not been paid. Indeed that fact is not contested and CBC's reply all but confirms the assertion. The simple fact is those monies are payable and remain so. CBC's submissions do nothing to change that fact.

[8] Indeed I would go further and remind CBC that the arrangement was entered into by its representative after the hearing of evidence. It was also entered into after an oral indication of the outcome; namely that Mr James would succeed with his

---

<sup>3</sup> Regulation 8(1) of the Employment Relations Regulations 2000

<sup>4</sup> CBC's Statement inReply / submission at [4]

application. Reasons were given and they largely relied upon evidential admissions made by CBC. Notwithstanding that Mr James chose to settle for an amount which, given the requirements of s 123(1)(b) of the Act, was considerably less than the minimum I could have contemplated ordering had I been required to do so. When it comes to fairness I must observe CBC was extremely well treated in the circumstances yet it has chosen to ignore the proverbial gift horse.

[9] As to the assertion CBC has ceased trading I can only observe it remains a registered company.

[10] Turning to the claim for interest. Interest is to reimburse someone for use, by others, of money that is theirs. There can be no doubt CBC has, by failing to make a payment it agreed to, continued to have use of money rightfully belonging to Mr James. This is, I conclude, a circumstance in which interest should be payable, especially in the absence of a contrary argument. According to the interest rate calculator established pursuant to s 13 of the Interest on Money Claims Act 2016 the amount payable is \$43.25.

[11] There is then the application for a penalty. The Authority does not have the power to award one in circumstances such as these. That is a matter for the Employment Court should there be further non-compliance.

[12] Costs are reserved if only because the claim was not quantified and CBC has not therefore had a chance to fully respond.

### **Conclusion and Orders**

[13] For the above reasons I conclude I should make the orders Mr James seeks.

[14] I therefore order the respondent, CBC (2013) Limited, comply with the Authority's determination of 14 December 2017<sup>5</sup> and pay the applicant, Troy James, \$3,796.56 (three thousand, seven hundred and ninety six dollars and fifty six cents) being the outstanding amounts ordered therein.

[15] In addition I order CBC (2013) Limited also pay Mr James \$43.25 (forty three dollars and twenty five cents) being interest owing as of the date of this determination.

---

<sup>5</sup> Above n 1

[16] The above payments are required to me made no later than 4.00pm on Wednesday 23 May 2018.

[17] In closing I caution the respondent and its director, Craig Bertram, that failure to comply with the above orders may result in further consequences. Should such a failure be pursued in the Employment Court<sup>6</sup> they potentially include the imposition of fines, the sequestration of property and/or imprisonment. Conversely a certificate of determination may be obtained and the matter pursued in the District Court.<sup>7</sup>

[18] Costs are reserved.

M B Loftus  
Member of the Employment Relations Authority

---

<sup>6</sup> Sections 139 and 140 of the Employment Relations Act 2000

<sup>7</sup> *Denyer v Peter Reynolds Mechanical Ltd t/a The Italian Job Service Centre* [2015] NZEmpC41 at [42] and *Broeks v Ross EmpC Auckland AC36A/09*, 11 November 2009 at [5]