

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2019] NZERA 415
3058896

BETWEEN ORLA KAVANAGH
 Applicant

AND RAINBOW POWER LIMITED
 Respondent

Member of Authority: Michael Loftus

Representatives: Michael Fennessey, counsel for the Applicant
 Nil for the Respondent

Investigation Meeting: On the papers

Date of Determination: 12 July 2019

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Orla Kavanagh, seeks an order the respondent comply with one of the provisions of a mediated settlement the parties concluded on 9 November 2018. The settlement was signed by a mediator in accordance with s 149 of the Employment Relations Act 2000.

[2] Rainbow Power Limited's position is unknown as it has failed to participate in the Authority's process. There is no statement in reply, nor any has there been any other response.

Investigatory process and non-participation of the respondent

[3] All companies are required to have an address for service and all relevant documents have been sent to that address.¹ Notwithstanding that there has been no

¹ Section 192(1) of the Companies Act 1993

response other than advice from the respondent's representative at the mediation, who was approached separately, that he no longer has instruction to act.

[4] The documents served included advice that if nothing was heard from the respondent by 4.00pm Wednesday 10 July 2019 the matter would be determined on the papers already before the Authority. There was no reply.

[5] In addition there is Regulation 8(3) of the Employment Relations Authority Regulations 2000 which provides that in the absence of a Statement in Reply the respondent can only reply to the claim with leave of the Authority. Leave has not been sought.

[6] Given Rainbow Power has been advised of the proposed process along with the consequences of ignoring the claim I conclude it appropriate I continue. The applicant is entitled to have the claim determined.

Discussion

[7] As already said the parties attended mediation on 9 November 2018. It ended with a Record of Settlement signed by the mediator pursuant to s 149 of the Act which, amidst other things, required the respondent ... *pay a contribution of \$1,500 + GST towards the Employee's representation costs. This invoice will be paid no later than 25 December 2018 and will be e-mailed to [Respondent's representative] for the purpose of payment.*²

[8] The invoice was sent on 13 November 2018 but no payment was received. Similarly a reminder dated 8 March 2019 failed to elicit a response

[9] Having perused the file I am satisfied payment is yet to be made. It follows that Rainbow Power is in breach of one of its obligations pursuant to the settlement. It further follows the order sought will be made.

Conclusion

[10] For the above reasons I order the respondent, Rainbow Power Limited, comply with the terms of the s 149 settlement agreed on 9 November 2018 and pay Innes Dean Tararua Law the sum of \$1,725.00 (one thousand, seven hundred and twenty

² Clause 7 of the settlement

five dollars) including GST. Payment is to be made no later than 4.00pm on Friday 26 July 2019.

[11] In closing I caution the respondent that failure to comply with the above orders may result in further consequences. Should such a failure be pursued in the Employment Court they potentially include the imposition of fines or sequestration of property.³ Conversely a certificate of determination may be obtained and the matter pursued under the District Courts Act 1947 which offer a more diverse and effective range of remedies than those available to the Employment Court.⁴

[12] Costs are reserved.

Michael Loftus
Member of the Employment Relations Authority

³ Sections 139 and 140 of the Employment Relations Act 2000

⁴ *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]