

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 148
5334865

BETWEEN HIROKI KAWASHIMA
Applicant

AND COLTEX LIMITED
Respondent

Member of Authority: Alastair Dumbleton

Representatives: Applicant in person
Kotaro Mizoguchi, advocate for Respondent

Determination(on papers): 11 April 2011

DETERMINATION OF THE AUTHORITY

Application for Compliance Order

[1] On 7 October 2010 a Record of Settlement was signed under s 149 of the Employment Relations Act 2000. The parties to it were the applicant Mr Hiroki Kawashima and the respondent Coltex Limited. The Record was signed by Mr Kawashima and also has on it the signature of Mr Kotaro Mizoguchi as a director of Coltex Limited. A mediator employed by the Department of Labour was a third signatory.

[2] The problem now brought by Mr Kawashima to the Authority is that the settlement has not been complied with.

[3] The Record expressly required Coltex Limited to pay Mr Kawashima a compensatory sum of \$7,500 under s 123(1)(c)(i) of the Employment Relations Act 2000. The amount was to be paid by way of direct credit to an account nominated by Mr Kawashima. The Record also provided that if the amount of \$7,500 remained unpaid at due date then interest would accrue at the rate of 8% per annum until the sum was paid. The agreed terms of the Record were expressed to be “the full and

final settlement of all matters between the Applicant and the Respondent arising out of their employment relationship.”

[4] In a statement of problem lodged on 15 February 2011, Mr Kawashima has complained that the terms of settlement have not been complied with, as he has not been paid \$7,500. He seeks an order requiring immediate payment of that sum together with the outstanding interest at 8% per annum.

[5] In an email providing what I will take to be the respondent’s statement in reply Mr Mizoguchi on behalf of Coltex Limited has confirmed the settlement and its terms and also that he has been unable to pay Mr Kawashima the agreed sum of \$7,500 by the deadline of 31 December 2010. He states that Mr Kawashima was paid \$800 on 10 March 2011 and that he plans to pay the balance as soon as possible together with the interest. Mr Kawashima confirmed that he had received \$800 from the respondent.

[6] Mr Mizoguchi advised that he wanted to lodge a “revised payment plan” instead of having a hearing of the application for compliance, but he has not provided any proposal in that regard.

[7] I find it is clear from the papers that the Record of Settlement entered into between the parties has not been fully complied with by the respondent, as the company did not make full payment of \$7,500 by 31 December 2010 and has made only part payment of \$800 in March 2011. A balance of \$6,700 therefore remains due to Mr Kawashima.

Compliance Order

[8] Being satisfied that Coltex Limited has failed to comply with a Record of Settlement made under s 149 of the Employment Relations Act 2000, the Authority orders the respondent company to pay \$6,700 to Mr Kawashima. The respondent is to comply as ordered within 14 days of service of this determination upon the company at its registered office and address for service of Level 6, Albert Plaza, 87-89 Albert Street, CBD, Auckland 1010.

[9] The Authority also orders Coltex Limited to pay Mr Kawashima within 14 days interest at 8% from the unpaid principal after 31 December 2010, which is to be reduced by \$800 from 10 March 2011.

[10] Also within 14 days, the respondent company is to pay \$71.56 to Mr Kawashima, being the application fee for a compliance order.

[11] For the information of the respondent company, failure to obey a compliance order such as this one made under ss 137 and 151 of the Act may provide a basis for an application to be made to the Employment Court for enforcement of the order. Under s 140 of the Act, where the Court is satisfied that any person (which includes a limited liability company) has failed to obey a compliance order the Court may order remedies. The remedies can include a fine not exceeding \$40,000 and/or the seizure of property, and for the proceeds of sale of that property to be distributed to the person who has sought enforcement of the Authority's order.

A Dumbleton
Member of the Employment Relations Authority