

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 142  
5402350

BETWEEN

YAM KAM KEUNG  
Applicant

A N D

FUTURE PRINT & DESIGN  
LIMITED  
Respondent

Member of Authority: James Crichton

Representatives: James Donovan, Counsel for Applicant  
No appearance for Respondent

Investigation Meeting: On the papers

Date of Determination: 24 April 2013

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The applicant (Mr Yam), and the respondent (Future Print) attended mediation together in respect of an employment relationship problem between them. That mediation resulted in the parties agreeing to commission the mediator to recommend a way of resolving their employment relationship problem pursuant to s.149A of the Employment Relations Act 2000 (the Act).

[2] The effect of the recommendation duly made by the mediator was that it became final and binding unless it was rejected by either party on or before 13 September 2012. That did not happen and accordingly the mediator's recommendation became final and binding at the end of that day (13 September 2012).

[3] The recommendation proposed payments by Future Print to Mr Yam. One such payment was a payment of \$4,750 net pursuant to s.123(1)(c)(i) of the Act which was due to be paid on or before 30 September 2012. The second payment was a payment of \$500 (plus GST if any) as a contribution to Mr Yam's legal costs and that payment was due and owing 28 days after receipt of an invoice from Mr Yam's lawyer. Neither payment was made. Mr Yam seeks compliance, interest, costs, and a penalty.

[4] Future Print has taken no part whatever in the Authority's process. It has been given ample opportunity to engage with the Authority but has provided no explanation for its failure to fulfil its obligations in terms of the mediator's recommendation and has not even filed a statement in reply.

[5] The Authority is satisfied that Future Print has been accorded all of the usual opportunities to engage with the Authority during this proceeding and has chosen not to be involved. On that basis, the Authority is satisfied that it is just to continue and deal with the matter.

### **Determination**

[6] The evidence before the Authority is plain. A mediator's recommendation under s.149A of the Act has not been complied with. Mr Yam has been deprived of the benefit of that recommendation for fully six months since the moneys became due and owing and as a consequence, Mr Yam is entitled to remedies.

[7] The Authority orders compliance with the mediator's recommendation totalling \$5,250 within 14 days of the date of this determination.

[8] In addition, Future Print is to pay to Mr Yam a further sum of \$1,000 as a contribution to Mr Yam's further legal costs in these proceedings to enforce compliance with the mediator's recommendation, such sum to also be paid within 14 days of the date of this determination.

[9] Finally, the Authority determines that, pursuant to s.134A of the Act, Future Print is to pay a penalty for obstructing the Authority's investigation of this matter by failing to engage in the Authority's process, such penalty to be in the sum of \$1,000. Pursuant to s.136(2) of the Act, that sum is to be paid to Mr Yam. That penalty sum is directed to be paid to Mr Yam to assist him in setting off the costs of the continuing

delay in Future Print engaging with the Authority, such that this matter can be dealt with and Mr Yam can be placed in the funds to which he would otherwise be entitled.

[10] The Authority has made the following awards against Future Print and in favour of Mr Yam. Future Print is to pay to Mr Yam the following sums:

- (a) The total of \$5,250 free of deduction in respect of the original mediator's recommendation;
- (b) A contribution to Mr Yam's further legal costs in the sum of \$1,000 free of deduction;
- (c) Payment of a penalty in the sum of \$1,000 for Future Print's failure to engage in the Authority's process.

[11] Those payments are to be made within 14 days of the date of this determination.

James Crichton  
Member of the Employment Relations Authority