

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2023] NZERA 547
3227179

BETWEEN ALEX KNIGHT
Applicant

AND TERESA GREENE
Respondent

Member of Authority: Peter Fuiava

Representatives: Robert Morgan, advocate for the Applicant
Respondent in person

Investigation Meeting: On the papers

Information and submissions received: 18 July, 14 August, and 12 September 2023 from the Applicant
11 August and 4, 8, 12 September 2023 from the
Respondent

Determination: 21 September 2023

DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] Mr Knight seeks a compliance order under s 137(1)(b) of the Employment Relations Act 2000 (the Act) of a determination issued against Ms Greene on 28 February 2023 (the primary determination).¹

[2] The issue for investigation and determination is whether a compliance order should be made because Ms Greene has failed to pay any of the sums of money ordered against her in the primary determination as set out below:

- (i) \$16,000 in compensation under s 123(1)(c)(i) of the Act for humiliation, loss of dignity and injury to feelings;

¹ *Alex Knight v Teresa Greene* [2023] NZERA 93.

- (ii) \$850 (gross) for loss of one week's lost wages as a result of there being no notice period provided;
- (iii) \$188.85 (gross) in unpaid holiday pay;
- (iv) interest on \$1,038.85 (\$850 + 188.50) from 9 October 2021 to date of payment using the civil debt interest calculator;
- (v) \$6,800 in lost remuneration under s 128 of the Act;
- (vi) reimbursement of the filing fee of \$71.55; and
- (vii) costs of \$1,125.

[3] The above sums were to be paid no later than 5 pm Friday 31 March 2023. As of the date of drafting this compliance determination, Ms Greene has not complied with the Authority's order.

How has the Authority investigated?

[4] A case management conference with the representatives was held on 27 June 2023 during which Ms Greene indicated she intended to challenge the primary determination in the Employment Court. However, as of drafting this determination, she has not done so.

[5] By agreement with the representatives, timetabling directions were made for the filing of written witness statements with which Mr Knight has complied but Ms Greene has not.

[6] On 11 August 2023, and three days after the due date for the filing of Ms Greene's written witness statement to the Authority, she advised by email that she was very busy as she was in the middle of calving and had forgotten about the due date for filing. Although Mr Morgan opposed her adjournment request, she was granted an extension to 1 September.

[7] On 4 September, Ms Greene emailed that she could not come up with "\$25,000" all at once and later clarified that she could only afford a maximum instalment repayment of \$1,000 per month. I was subsequently advised by Mr Morgan that this offer had previously been rejected and that Ms Greene had offered lump sums well above what she was offering now. Mr Morgan submitted that no evidence had been provided as to how Ms Greene could afford only \$1,000 per month and that this seemed

to be a ploy to draw the matter out and cause Mr Knight additional stress. Under the terms sought, the debt would not be repaid until mid-2026. Mr Knight sought a penalty against Ms Greene under s 134A of the Act for obstructing or delaying the Authority's investigation.

[8] By email of 12 September 2023, Ms Greene stated that if she was to pay in lump sums she would have to borrow money when she had just taken a loan to get her through the rest of winter and that she does not get paid from June to August as her cows were not milking. Ms Green stated further that she had worked out the \$1,000 per month based on her budget as she did have other bills and staff to pay.

[9] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Should the Authority make a compliance order against Ms Greene?

[10] The Authority may make a compliance order where any person has not observed or complied with any order, determination, direction, or requirement made or given under the Act by the Authority or by a member or officer of the Authority.²

[11] Ms Greene has not paid any of the monies ordered against her by the Authority and the primary determination has not been challenged in the Employment Court. My orders against Ms Greene remain valid and are enforceable.

[12] Having regard to the information and evidence before me, I grant Mr Knight's application for a compliance order. While Ms Greene did not comply with my timetabling directions for the filing of her written witness statement to the Authority, she has engaged with the process and has not caused inordinate or undue delay to my investigation. The claim for a penalty under s 134A is declined.

[13] Section 138(4A) of the Act provides for a compliance order relating to payment of a sum of money to an employee (whether in whole or in part) to be made by instalments, but only if the financial position of the employer requires it.

² The Act, s 137(1)(b).

[14] What financial information I have of Ms Greene's financial position is scant and in the absence of verifying information such as financial records, accounting statements or relevant bank account records, Ms Greene's advice that she can only afford \$1,000 per month cannot be accepted at face value. However, I take into account her farming operations and the calving season and I am willing to give a short reprieve so as to assist with cashflow. Even so, the suggestion of spreading payments over a two-year period while practical for her is unpalatable for Mr Knight who would be deprived of the immediate fruits of his victory in the Authority. A reasonable balance must be struck.

Summary of orders, costs and reasonable expenses incurred

[15] The Authority orders Teresa Greene to comply with the primary determination by paying Alex Knight the following amounts:

- (i) \$16,000 in compensation for humiliation, loss of dignity and injury to feelings;
- (ii) \$850 (gross) for loss of one week's lost wages as a result of there being no notice period provided;
- (iii) \$188.85 (gross) in unpaid holiday pay;
- (iv) interest on \$1,038.85 from 9 October 2021 to date of payment using the civil debt interest calculator;³
- (v) \$6,800 in lost remuneration under s 128 of the Act;
- (vi) reimbursement of the filing fee of \$71.55; and
- (vii) costs of \$1,125.

[16] In addition to the above, the Authority orders Ms Greene to pay Mr Knight \$1,000 in costs for the present application and the filing fee of \$71.55 for lodging his Statement of Problem.

[17] Pursuant to s 138(4A) of the Act, the Authority orders Teresa Greene to pay the above sums of money at [15] and [16] in three instalment payments as follows:

- (i) first instalment of \$2,000 by Friday 29 September 2023;
 - (ii) second instalment payment of \$10,000 by Friday 20 October 2023;
- and

³ See www.justice.govt.nz/fines/civil-debt-interest-calculator

- (iii) third instalment payment comprising the remaining balance including any unpaid interest, costs, and the filing fee by Monday 20 November 2023.

[18] In the event Ms Greene fails to comply with the payment instalment plan as ordered, Mr Knight is able to recover interest on the outstanding amount from the date of the default to the date of payment using the civil debt interest calculator. The Authority's power to award interest derives from cl 11 sch 2 of the Act and is so ordered.

[19] Imposition of a compliance order is a serious matter. If Ms Greene fails to comply with this compliance order, Mr Knight may apply to the Employment Court for it to exercise its powers under s 140(6) of the Act.

Peter Fuiava
Member of the Employment Relations Authority