

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 296  
3287119

BETWEEN                      ROSS LAMBOURN  
   Applicant  
  
AND                              TEVITA FIFITA  
   Respondent

Member of Authority:      Robin Arthur  
  
Representatives:            Applicant in person  
   No attendance by Respondent  
  
Investigation:                On the papers and by telephone conference  
  
Determination:                20 May 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] By determination issued on 16 February 2024 Tevita Fifita was ordered to resolve an employment relationship problem by paying Ross Lambourn \$10,430.41 within 28 days.<sup>1</sup> This amount comprised arrears of wages and holiday pay, remedies of lost wages and distress compensation for a personal grievance of unjustified dismissal and reimbursement of an Authority fee.

[2] Mr Fifita did not pay the ordered amount and Mr Lambourn applied to the Authority for an order to be paid the amounts due to him under that determination.

[3] The Authority has endeavoured to contact Mr Fifita by post to a residential address he provided to the Authority during the earlier proceedings, by email to his email address and by telephone to two numbers on which he has also previously spoken with Authority officers. Mr Fifita did not lodge a statement in reply or respond to

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<sup>1</sup> *Lambourn v Fifita* [2024] NZERA 88.

Minutes of the Authority sent to him on 10 and 16 May or to emails sent to him on 26 March, 10 May, 13 May and 16 May 2024. Telephone calls to the numbers held for Mr Fifita were not answered and no voice mail option was available.

[4] The Minutes concerned arrangements for a telephone conference to discuss the situation with Mr Lambourn and Mr Fifita. Both Minutes advised Mr Fifita that the Authority could proceed to make a compliance order if he did not respond or take part in the process.

[5] The telephone conference proceeded today at the time advised to Mr Fifita by those Minutes and by email. He could not be contacted on either of the telephone numbers held for him. Two calls were made to each number without success.

[6] Mr Lambourn did attend the call. He confirmed Mr Fifita has not paid him the amounts ordered by the Authority. He said Mr Fifita had his bank account number from when Mr Lambourn worked for Mr Fifita so there was no reason the sum due could not have been transferred by direct credit to him.

[7] As Mr Fifita has not taken part in the Authority process and has provided no information on why he has not paid the amounts ordered to be paid, it was appropriate to exercise the Authority's powers to order compliance with orders made in the earlier determination. The Authority may proceed in the absence of a party where no good cause has been shown for not taking part or responding to the communication from the Authority.<sup>2</sup> No good cause has been shown in this case.

## **Orders**

[8] Under s 137 of the Employment Relations Act 2000 (the Act) Mr Fifita is ordered to comply with the Authority's order to pay Mr Lambourn the sum of \$10,430.41 comprising the following amounts:

- (i) \$4,500 under s 123(1)(b) of the Act;
- (ii) \$4,000 as compensation under s 123(1)(c)(i) of the Act;
- (iii) \$818.36 as arrears of wages;
- (iv) \$1,040.50 as holiday pay; and
- (v) \$71.55 as reimbursement of the fee paid to lodge the application in the Authority.

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<sup>2</sup> Employment Relations Act 2000, s 173(2) and Sch 2 cl 12.

[9] Mr Fifita must comply with this order within 14 days of this determination, that is by no later than Tuesday, 4 June 2024.

[10] Mr Fifita must also pay Mr Lambourn an additional amount of \$71.56 in reimbursement of the fee paid to lodge his application for the compliance order made in this determination.

[11] If Mr Fifita fails to comply with this order, Mr Lambourn may apply to the Employment Court to exercise its powers to sequester property from Mr Fifita, impose a fine or order a term of imprisonment.<sup>3</sup>

[12] Alternatively, Mr Lambourn may file this order in the District Court. The order is then enforceable in the same manner as an order made by the District Court.<sup>4</sup> A Certificate of Determination is to be issued with the determination to assist with that process if needed.

Robin Arthur  
Member of the Employment Relations Authority

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<sup>3</sup> Employment Relations Act 2000, s 138(6) and s 140(6)

<sup>4</sup> Section 141(1).