

[3] I am satisfied that the statement of problem was served on Mr Swart on 27 August 2025 at his place of work in Orewa. No statement in reply was received in the required timeframe.

[4] Throughout the Authority's investigation, Mr Swart has been copied into the Authority's email correspondence with Mr Lanning's representative, Mr Mathews. The email address used for Mr Swart was the same email address he corresponded with the Authority during the earlier investigation that led to the first determination.

[5] The Authority held a case management conference on 14 October 2025, attended only by Mr Mathews on behalf of Mr Lanning. It was agreed this matter could be determined "on the papers" without the need for an investigation meeting. The directions advised of the Authority's intention to determine this matter on the papers after receiving timetabled information from the parties. The parties were given a date by which to provide any material.

[6] In accordance with the Authority's timetabling, Mr Lanning provided a sworn affidavit confirmed none of the payments ordered in the first determination have been received by him.

[7] The Authority required relevant documents to be served by a document server. An affidavit of service has been received from a document server who confirmed a further copy of the statement of problem, the Authority's directions and annexures, and Mr Lanning's affidavit was served on Mr Swart on 5 November 2025 at his place of work in Orewa.

[8] No email correspondence has been received from Mr Swart throughout this investigation.

[9] This matter is now determined on the papers.

[10] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and/or law, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result.

The issues

[11] The issues requiring investigation and determination is whether a compliance order should be issued, whether interest on the outstanding amounts should be awarded, and whether any costs and expenses should be awarded to Mr Lanning.

Compliance order

[12] Section 137(1)(b) of the Act gives the Authority power to order compliance where a person has not complied with any order or determination made or given under the Act by the Authority.

[13] The time for payment by Mr Swart has well passed. There is no indication before the Authority of any attempt being made to comply with the first determination or of any intention to do so in the future. In those circumstances I exercise my discretion to under s 137(1)(b) of the Act to order compliance with the orders for payment in the first determination.

[14] The imposition of a compliance order is a serious matter. Should Mr Swart fail to comply with the compliance order as set out above, the Employment Court has powers to impose a fine not exceeding \$40,000, order that property be taken possession of (sequestered), or impose a sentence of imprisonment not exceeding three months.² Alternatively, a certificate of determination may be obtained from the Authority and enforcement obtained in the District Court.

Interest

[15] It is appropriate where a person has been deprived of the use of money to make an award for interest, and as such Mr Lanning is entitled to an award of interest. Interest must be calculated using the Civil Debt Interest Calculator. Interest is to be calculated from 14 June 2025 (inclusive) and continues to accrue on the total amount until all of the sums awarded by the Authority in the first determination are fully paid.³

Orders

[16] Within 14 days of the date of this determination Jacques Swart is to:

² Employment Relations Act 2000, ss 139 and 140(6).

³ <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>.

(a) Comply with the Authority's determination *Lanning v Swart* [2025] NZERA 275 by paying Kade Lanning:

- (i) \$9,800 to as a total remedy for his unjustified dismissal; and
- (ii) \$7,225 gross for arrears of outstanding annual holiday pay; and
- (iii) \$2,250 as a contribution to his costs of representation; and
- (iv) \$71.55, being the Authority application fee.

Costs

[17] The Authority has the power under Schedule 2, clause 15 of the Act to award costs. When considering costs, the starting point is usually the Authority's daily tariff, which is \$4,500 for a one-day investigation meeting.

[18] Mr Lanning has been successful before the Authority in his compliance application. Representation fees were incurred, and he is entitled to a contribution to his costs.

[19] Mr Lanning seeks costs at a quarter of the daily tariff amount, being \$1,125.

[20] Mr Lanning has been put to unnecessary expense in seeking a compliance order. Bearing in mind that costs in the Authority are modest and that the present application was straight forward, within 14 days of the date of this determination the Authority orders Jacques Swart to pay Mr Lanning:

- (a) \$750 in costs; and
- (b) \$71.55, being the Authority application fee for this application; and
- (c) \$120 plus GST, being the costs incurred using the document server.

Sarah Blick
Member of the Employment Relations Authority