

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

**[2024] NZERA 77  
3262699**

BETWEEN

MICHAEL McINTYRE  
Applicant

AND

ISEE DIGITAL 2012 LIMITED  
Respondent

Member of Authority: Eleanor Robinson  
Representatives: Applicant in person  
Warren Sinclair for the Respondent  
Investigation Meeting On the papers  
Determination: 12 February 2024

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**DETERMINATION OF THE AUTHORITY**

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**Application for compliance order**

[1] The Applicant, Michael McIntyre, seeks an order for compliance and interest in relation to the Terms of Settlement agreed with the Respondent, ISEE Digital 2012 Limited. The agreement reached by the parties was set out in a Terms of Settlement lodged with the Authority on 18 September 2023 and incorporated into a Consent Determination of the Authority dated that same date, 18 September 2023<sup>1</sup>.

[2] In the agreed Terms of Settlement, ISEE Digital Limited agreed to pay Mr McIntyre the sum of \$28,308.85.

[3] On 14 November 2023 Mr McIntyre applied to the Authority for a Compliance Order, claiming that ISEE Digital 2012 Limited had not paid the agreed sum.

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<sup>1</sup> *Michael McIntyre v Isee Digital Limited* [2023] NZERA 538

### **The Authority's Investigation**

[4] The parties agreed to the Authority determining this issue on the papers following a case management conference with Mr McIntyre and Mr Sinclair.

### **Relevant Facts**

[5] On 20 June 2023 Mr McIntyre lodged a Statement of Problem with the Authority claiming he was owed unpaid wages, notice period and holiday pay by ISEE Digital 2012 Limited.

[6] Following a case management conference call with the parties, a date of 12 September 2023 was agreed for an Investigation Meeting into Mr McIntyre's claims to take place. It was agreed to hold the investigation by telephone.

[7] At the commencement of the Investigation Meeting on 12 September 2023 the parties advised that they had resolved the matter between them, and requested that their agreement be confirmed in a consent determination, which was agreed.

[8] The Terms of Settlement provided by the parties cited the name of the Respondent as ISEE Digital Limited. This was the name of the Respondent reflected in the Consent Determination.

[9] During the telephone conference with the parties on 09 February 2024, they both confirmed that the incorrect Respondent name had been an oversight, and agreed that they had intended the Terms of Settlement and the Consent Determination to be binding on ISEE Digital 2012 Limited.

[10] The agreed sum to be paid to Mr McIntyre as set out in the Terms of Settlement was \$28,308.85 with payment to be made on or before 31 October 2023.

[11] Mr Sinclair said that at the time of entering into the Terms of Settlement he had been expecting funds to be paid to ISEE Digital 2012 Limited during October 2023, and once received, he had fully intended to pay Mr McIntyre the agreed amount.

[12] Unfortunately the funds had not been received as expected, and he had been unable to complete payment.

*Compliance Orders.*

[13] The Authority's power to grant compliance is discretionary. It is not an absolute discretion but one which is conditioned by the need to do justice to the parties according to the merits of the case.<sup>2</sup>

[14] Mr Sinclair does not dispute that he intended to pay Mr McIntyre the sum set out in the Terms of Settlement, but his ability to be able to do so was rendered ineffective by the failure to secure funding into ISEE Digital 2012 Limited.

[15] I am satisfied that SEE Digital 2012 Limited has not complied with the Terms of Settlement agreed between the parties and confirmed in Consent Determination [2023] NZERA 538 dated 18 September 2023. Having considered all the circumstances, I find it is just, in the circumstances, for an order to be made requiring ISEE Digital 2012 Limited to comply with the determination.

[16] Mr McIntyre has applied for interest on the amount agreed to be paid by ISEE Digital 2012 Limited.

[17] I consider it appropriate to order interest from the date the amount was due to be paid to Mr McIntyre i.e. 31 October 2023.

[18] ISEE Digital 2012 Limited is to pay interest at the rate prescribed in the Interest on Money Claims Act 2016 on the outstanding sum due to Mr McIntyre from 31 October 2023 until the amount owed is paid in full.

*Filing Fee*

[19] ISEE Digital 2012 Limited is also to pay \$71.56 to Mr McIntyre in respect of the fee on the application for the Compliance Order.

**Orders**

[20] **ISEE Digital 2012 Limited is ordered to pay Mr McIntyre the following amounts:**

- (i) **\$28,308.85 agreed by the parties in the Terms of Settlement and confirmed in Consent Determination [2023] NZERA 538**

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<sup>2</sup> *United Food and Chemical Workers Union of NZ v Talley* [1992] 1 ERNZ 756 at (4)

- (ii) **Interest on that amount to be calculated in compliance with Schedule 2 of the Interest on Money Claims Act 2016 from 31 October 2023 until the costs are paid in full; and**
- (iii) **\$71.56 reimbursement of the filing fee.**

**Costs**

[21] I consider it appropriate in this matter in which Mr McIntyre represented himself and therefore incurred no costs, for no contribution to costs to be to be awarded.

Eleanor Robinson  
Member of the Employment Relations Authority