

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 481
3065392

BETWEEN ALISDAIR McNAIR
 Applicant

AND KENSAIR LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in Person
 No Appearance by Respondent

Investigation Meeting: 15 August 2019 at Auckland

Written Record of Oral 16 August 2019
Determination:

ORAL DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 15 May 2019 Mr McNair and Kensair Limited (Kensair) entered into a Record of Settlement agreement (RoS) that was signed by a mediator from Ministry of Business Innovation and Employment under s 149 of the Employment Relations Act 2000 (the Act).

[2] Clause 2 of the RoS provided for Kensair to pay Mr McNair a specified amount by way of direct credit to his nominated bank account by 29 May 2019.

[3] Although Kensair had Mr McNair's bank account details it has not paid him anything, in breach of its obligations under clause 2 of the RoS.

[4] Clause 3 of the RoS required Kensair to pay a specified amount upon receipt of an invoice from Mr McNair's then advocate as a contribution towards Mr McNair's legal costs, within fourteen days of receipt of it.

[5] Mr McNair's advocate told him that he had sent the invoice to Kensair but it has still not been paid.

[6] Mr McNair and his advocate went to Kensair's business premises on 23 June 2019 to ask for the RoS payments to be made. However they were unable to speak to anyone from Kensair about that. Kensair has been uncommunicative regarding its RoS obligations.

[7] Mr McNair asked the Authority to order Kensair to comply with the RoS and for interest to be paid on the outstanding amounts that should have been paid in full by now.

No appearance by respondent

[8] Kensair did not file a Statement in Reply within fourteen days of Mr McNair's Statement of Problem being served on it. Service occurred on 16 July 2019 and the Statement of Problem was signed for by "*Charlotte Sutherland*" at Kensair's registered office.

[9] The Authority advised Kensair on 6 August 2019 that it required leave to file a statement in reply out of time and it was given until 12 August to do so. Kensair has not sought leave from the Authority to file a Statement in Reply out of time.

[10] Kensair did not attend the Authority's investigation meeting today.

Compliance order

[11] The Authority is satisfied that:

- (a) Kensair has not complied with its obligations under clauses 2 and 3 of the RoS entered into by the parties on 15 May 2019;
- (b) Unless a compliance order is issued then it would be unlikely to comply with its RoS obligations.

[12] Accordingly, Kensair is ordered within twenty eight days of the date of this determination to comply with clauses 2 and 3 of the RoS dated 15 May 2019 by paying:

- (a) Mr McNair the amount specified in clause 2 of the RoS; and

(b) Mr McNair's advocate the amount specified in clause 3 of the RoS.

Interest

[13] Mr McNair has been deprived the use of his money since 29 May 2019. It is therefore appropriate for Kensair to pay Mr McNair interest on the amounts outstanding under clauses 2 and 3 of the RoS from 30 May 2019 until these amounts have been paid in full.

[14] Interest is to be calculated using the Ministry of Justice's online calculator set up under the Interest on Money Claims Act 2016. Interest is awarded on any amount outstanding and continues to accrue until the full amount owing has been paid.

Filing fee reimbursement

[15] Mr McNair represented himself in respect of these proceedings so there is no issue as to costs. However as the successful party he is entitled to recover \$71.56 for his filing fee.

[16] Kensair is therefore ordered to pay Mr McNair \$71.56 within twenty-eight days of the date of this determination, in addition to the amounts that it has been ordered to pay in accordance with clauses 2 and 3 of the RoS.

Warning

[17] The Authority records that if Kensair does not comply with this compliance order then Mr McNair may apply to the Employment Court for a further compliance order. In which case the Employment Court may impose a period of imprisonment of up to three months, a fine or order the sequestration of Kensair's property under s 140(6) of the Employment Relations Act 2000.

Rachel Larmer
Member of the Employment Relations Authority