

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2023] NZERA 247
3210659

BETWEEN

DESMOND MILLAR
Applicant

AND

COAST FARMING LIMITED
Respondent

Member of Authority: Shane Kinley

Representatives: Tavia Moore and Julia Yoo, Counsel for the Applicant
No appearance for the Respondent

Investigation Meeting: On the papers

Determination: 17 May 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Desmond Millar claims that Coast Farming Limited (CFL) has breached the orders of the Authority¹ to pay Mr Millar \$4,606.70 gross (less \$59 that has been paid). Mr Millar is seeking a compliance order requiring that CFL pay him \$4,547.70 gross, interest on this amount and costs (including filing fee).

[2] CFL has not engaged substantively in this proceeding, though a director and shareholder of CFL Lucky Zvinowanda (who represented CFL in the earlier Authority proceeding) did contact an Authority Officer when made aware of this proceeding.

The Authority's investigation

[3] In investigating this employment relationship problem, a case management conference was held on 29 March 2023, which was attended by counsel for Mr Millar.

¹ *Millar v Coast Farming Ltd* [2017] NZERA Christchurch 221.

There was no appearance for CFL. Due to earlier contact from Mr Zvinowanda to an Authority Officer, I was satisfied Mr Zvinowanda was made aware of the time and date of the conference. Given the above, the conference proceeded in the respondent's absence.

[4] During the case management conference, I directed Mr Millar lodge a written statement with the Authority by 26 April 2023 along with any other evidence on his behalf, which he did.

[5] I also provided CFL with a final opportunity to engage with this matter, by lodging any application for leave to reply or respond to this matter, along with an intended statement in reply and any documents relevant to this matter by 12 April 2023.

[6] Documents for this proceeding were delivered to the registered office address and address for service for CFL, as recorded on the Companies Office register. I am satisfied that Mr Zvinowanda, on behalf of CFL, has been made aware of the timetable for the Authority's investigation. No further response was received from CFL or Mr Zvinowanda.

[7] I directed that this matter would be determined on the papers without the need for an in-person investigation meeting. For the Authority's investigation a statement of problem was received on behalf of Mr Millar and a written witness statement was lodged from Mr Millar.

[8] No submissions were received from CFL. I am satisfied that CFL is aware of the present proceedings and that they have been given a fair and reasonable opportunity to respond. The Authority has the power to proceed if any party fails to attend.²

[9] As permitted by s 174E of the Employment Relations Act 2000 (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.

The issues

[10] The issues requiring investigation and determination were:

² Employment Relations Act 2000, Schedule 2, clause 12.

- (a) Has CFL breached the orders of the Authority to pay Mr Millar \$4,606.70 gross (less \$59 that has been paid)?
- (b) If so, should a compliance order be made?
- (c) In addition to any compliance order, should CFL be required to pay Mr Millar interest on the above unpaid amount?
- (d) Should either party contribute to the costs of the other party (including filing fee)?

The orders of the Authority have been breached

[11] The statement of problem and written witness statements from Mr Millar set out the relevant facts. On 19 December 2017 the Authority found that CFL owed Mr Millar one week of pay, unpaid holiday pay, an amount for underpayments for working on public holidays and an amount for bank fees incurred due to CFL not paying Mr Millar correctly and on time. The combined payment ordered by the Authority totalled \$4,606.70 gross, with the Authority allowing payments in monthly instalments between 31 December 2017 and 29 March 2018. The Authority also ordered that “If any amount is late or short-paid the full amount outstanding is immediately due for payment.”

[12] Mr Millar advised that of the amounts due he has only received \$59, meaning \$4,547.70 gross is outstanding.

[13] Mr Millar has made numerous efforts to contact CFL and Mr Zvinowanda to arrange payment, including filing for a financial assessment hearing and sending a letter of demand.

[14] While Mr Zvinowanda raised potential impecuniosity issues (on behalf of himself and CFL) when he contacted the Authority Officer about this proceeding, he has not provided any evidence to support that claim. A search of the Companies Office register shows that CFL remains a registered company, with the same registered office address and address for service as at the time of the Authority’s earlier orders, although Mr Zvinowanda has a new address.

[15] I am satisfied that the conditions required for the above payment have been satisfied, this amount is due and find there have been multiple and sustained breaches of the Authority’s orders by CFL.

A compliance order is appropriate

[16] In light of the evidence and information before me from Mr Millar, and there being nothing provided by CFL and Mr Zvinowanda to the contrary, I am satisfied that a compliance order should be made in Mr Millar's favour.

An order for payment of interest is appropriate

[17] I also consider that an order for payment of interest is appropriate. Mr Millar has been without the benefit of money that was due to him since 31 December 2017.

[18] The Authority's orders were clear that if "If any amount is late or short-paid the full amount outstanding is immediately due for payment", meaning that the default in payment by CFL on that date led to the full amount of \$4,547.70 being due at that date. Mr Millar has taken appropriate steps to recover that amount, as detailed in paragraph 13.

[19] Mr Millar is entitled to interest on the full amount due to him of \$4,547.70 from 1 January 2018 until that amount has been paid in full.

Compliance Order

[20] I find CFL has failed to pay to Mr Millar the amounts ordered by the Authority. It is just, in the circumstances for an order to be made requiring CFL to comply with the Authority's determination.

[21] I order that Coast Farming Limited pay Desmond Millar:

- (a) the amount of \$4,547.70 no later than 28 days after the date of service of this Compliance Order; and
- (b) interest on the above amount from 1 January 2018 until that amount has been paid in full. The amount of interest payable in accordance with the determination, is to be calculated in accordance with the Interest on Money Claims Act 2016, using the civil debt calculator on the Ministry of Justice website.³

[22] There are very serious consequences where there is a failure to comply with a compliance order. The Authority has the ability to extend the time specified to obey the

³ <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>. As at 17 May 2023, the amount of interest payable was \$669.25. The parties will need to determine the amount payable at the date any payments are made.

compliance order on the application of the person required to obey the order in s 138(3) of the Act. If such extension application was to be made within the time for compliance of 28 days, clear documentary information about CFL's financial position would be required to be provided to the Authority and Mr Millar.

Costs

[23] Mr Millar did not seek costs in these proceedings, however, I consider it is also appropriate to order CFL reimburse Mr Millar the filing fee of \$71.56. This amount is also to be paid no later than 28 days after the date of service of this compliance order.

Effect of further non-compliance

[24] CFL are advised that if it does not observe or comply with a compliance order the Employment Court may do one or more of the following pursuant to s 140 (6) of the Act: ...

- (d) order that the person in default be fined a sum not exceeding \$40,000;
- (e) order that the property of the person in default be sequestered.

Shane Kinley
Member of the Employment Relations Authority