

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2014] NZERA Wellington 67
5458510

BETWEEN JUDITH ANN MURPHY
 Applicant

AND PAULA JANE HARRIS
 Respondent

Member of Authority: Trish MacKinnon

Representatives: Gail Harris for Applicant
 No appearance for Respondent

Investigation Meeting: 25 June 2014

Determination: 26 June 2014

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] On 10 September 2013, Paula Harris acknowledged she owed wages to Judith Murphy in the sum of \$4,687.76. This related to Ms Murphy's employment by Ms Harris between January and March 2013. The parties agreed Ms Harris would discharge the debt by paying Ms Murphy weekly instalments of \$100 commencing Thursday, 12 September 2013 and continuing until the debt was repaid in full. The agreement was recorded in a consent determination dated 10 September 2013.

[2] Ms Harris made regular weekly payments of \$100 from 12 September 2013 until 13 December 2013. Since then she has made four payments, which were made between 23 December 2013 and 7 February 2014. In total she has paid \$1,800 of the acknowledged debt. A debt recovery firm, acting on behalf of Ms Murphy, wrote to Ms Harris on 20 March 2014, noting her failure to continue the payments beyond 7 February 2014 and advising her she must make up the missing payments. Ms Harris did not respond to that letter.

[3] Ms Murphy now seeks the outstanding balance of the debt owed to her by Ms Harris. In addition, she seeks reimbursement of the Authority's filing fee, and payment of her representation and debt collection costs.

The Authority's investigation

[4] A copy of Ms Murphy's application to the Authority was delivered by courier to Ms Harris and signed for on Tuesday, 6 May 2014. Along with the application was a letter from the Authority informing Ms Harris she was required to file a Statement in Reply within 14 days after receiving the Authority's letter. Ms Harris did not file a Statement in Reply and nor did she participate in the telephone conference call directed by the Authority to take place on Friday, 30 May 2014.

[5] Ms Harris subsequently refused to accept documents delivered to her by courier from the Authority. Ms Murphy engaged Ms Gail Harris of Debt Recovery Services Limited to represent her and serve documentation, including a notice of investigation meeting, on Ms Harris at her place of work. Ms Gail Harris is not related to the respondent. The investigation meeting was scheduled for 2 p.m. on Wednesday, 25 June 2014. The respondent did not attend.

[6] I am satisfied from the evidence presented to me that Ms Harris was served the notice of investigation meeting on 14 June 2014. When she did not appear on 25 June I delayed the investigation meeting while a support officer attempted to contact Ms Harris on both her landline and mobile phone. The calls were not answered. I decided to continue with the investigation meeting as if the respondent had duly attended or been represented in accordance with clause 12, Schedule 2 of the Employment Relations Act 2000 (the Act).

Discussion

[7] On the evidence of Ms Murphy and Mr John Murphy I am satisfied Ms Harris has failed to comply fully with the terms of the consent determination dated 10 September 2013. That brings the matter within the Authority's jurisdiction to order compliance pursuant to s. 137(1)(b) of the Act.

[8] Ms Harris' debt to Ms Murphy now stands at \$2,887.76. If she had continued to pay the weekly instalments of \$100 as required by the terms of the consent determination, the debt would be discharged in full by 31 July 2014 by my

calculation. Ms Murphy is entitled to a compliance order for payment of the amount of the debt owing at the date of the investigation meeting. That amount is \$2,300, being the \$4,100 that should have been paid to 25 June 2014 less the \$1,800 already paid.

[9] That will leave \$587.66 remaining to be paid by weekly instalments from 26 June to 31 July 2014 in accordance with the terms of the agreement recorded in the consent determination. If Ms Harris continues to fail to adhere to the agreement, Ms Murphy may return to the Authority after 31 July 2014 seeking compliance for the remainder of the sum agreed to be paid.

Order

[10] Ms Harris is ordered to comply with the agreement recorded in the consent determination of 10 September 2013 by paying Ms Murphy the sum of \$2,300 in full by 16 July 2014.

Costs

[11] Ms Murphy seeks reimbursement of the filing fee for this application, and a contribution towards her costs. I am satisfied those costs have been reasonably incurred and I consider the sum of \$295.00 plus the filing fee of \$71.56 to be appropriate.

[12] Ms Harris is ordered to pay Ms Murphy \$366.56 in costs, pursuant to clause 15 of Schedule 2 of the Act.

Consequences of non-compliance

[13] Failure by Ms Harris to comply with the compliance order may result in Ms Murphy applying to the Employment Court. The court's powers under s.140 (6) of the Act include ordering that the person in default be sentenced to a term of imprisonment not exceeding 3 months and/or a fine not exceeding \$40,000.

Trish MacKinnon
Member of the Employment Relations Authority