

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 5  
5597504

BETWEEN            APELAMO NICHOLAS  
                                 Applicant  
  
A N D                POINT TO POINT HOLDINGS  
                                 LIMITED  
                                 Respondent

Member of Authority:      Rachel Larmer  
  
Representatives:            Applicant in person  
                                 No Appearance by Respondent  
  
Investigation Meeting:      07 January 2016 at Auckland  
  
Written Record of  
Oral Determination:        07 January 2016

---

**DETERMINATION OF  
THE EMPLOYMENT RELATIONS AUTHORITY**

---

**Employment relationship problem**

[1] Mr Nicholas successfully pursued wage arrears claims against his former employer Point to Point Holdings Limited (Point to Point).

[2] On 29 September 2015 the Authority issued a substantive determination in Mr Nicholas' favour which ordered Point to Point to pay specified amounts to Mr Nicholas within 28 days of the date of its determination.

[3] Point to Point was also ordered to pay Mr Nicholas' KiwiSaver contributions, the KiwiSaver kickstart and the correct PAYE for Mr Nicholas to the Inland Revenue Department within seven days of the date of the substantive determination.<sup>1</sup>

---

<sup>1</sup> [2015] NZERA Auckland 299

[4] Mr Nicholas claims that the Authority's substantive determination has not been complied with. Mr Nicholas seeks a compliance order against Point to Point.

[5] Mr Nicholas says that he has not been paid any money as a result of the substantive determination despite ongoing communications with Point to Point's director Mr Steve Foley which Mr Nicholas says have not resulted in him receiving any of the moneys he has been awarded.

[6] Point to Point did not file a Statement in Reply. Nor did it appear at the Authority's investigation meeting. The Statement of Problem was served on Point to Point at its registered office by track and trace courier on 25 November 2015. The Notice of Hearing was served on Point to Point on 21 December 2015.

[7] On 18 December 2015 the Authority directed Point to Point to file affidavit evidence (which was to include properly sworn exhibit notes) setting out its financial position and in particular its ability or inability (as the case may be) to pay the amounts awarded to Mr Nicholas in the Authority's substantive determination. That direction was not complied with.

[8] Mr Nicholas says that he still in a very difficult financial position due to carrying the costs of his unpaid wages. Mr Nicholas pointed out to the Authority that the Point to Point Facebook page (copy of this was produced) shows that the company hosted a mid-Christmas party with photos of this event being posted to Facebook in September 2015.

[9] Mr Nicholas queries how Point to Point can afford to host a party for staff yet claim that it is unable to pay him the wage arrears he has been awarded by the Authority.

[10] Mr Nicholas also produced an email to the Authority sent to him by Mr Foley on 28 October 2015 which says that Mr Foley would get the funds to Mr Nicholas the following week. That did not occur. Mr Nicholas put Mr Foley on notice that if he did not receive payment he would be applying for a compliance order from the Authority.

[11] Mr Foley responded to that saying payment would be made that week, but that if Mr Nicholas pursued a compliance order application before the Authority then Mr Foley would close the business.

[12] I accept Mr Nicholas' sworn evidence that he has not received any money subsequent to the Authority's substantive determination. I am also satisfied that unless the Authority issues a compliance order it is unlikely that Point to Point will voluntarily pay Mr Nicholas the amounts he has been awarded.

[13] I therefore order Point to Point to comply with the Authority's substantive determination dated 29 September 2015 within 28 days of the date of this determination.

[14] This means that Point to Point must pay Mr Nicholas within 28 days of the date of this determination:

- (a) \$3,675.67 wage arrears;
- (b) \$1,164.64 mileage;
- (c) \$1,244.26 statutory holiday pay;
- (d) \$1,049.06 holiday pay;
- (e) \$71.56 filing fee;
- (f) Interest at the rate of 5% on the above amounts which is to run from 03 March 2015 until the above amounts in paragraph [12] (a) – (d) have been paid in full. I note that the Authority's substantive determination incorrectly noted at paragraph [37](e) interest was at the rate of 7.5%. That is incorrect. The current prescribed rate of interest under the Judicature Act 1908 is 5%. The erratum issued by Authority corrected this amount. However, just to make it absolutely clear, the interest was awarded as per paragraph [35] of the substantive determination.<sup>2</sup>

[15] In the Authority's substantive determination Point to Point was ordered to pay on Mr Nicholas' behalf to Inland Revenue Department (IRD) within seven days of the date of that determination:

- (a) \$786.80 KiwiSaver contributions (this was at the compulsory contribution rate of 6% of Mr Nicholas' total gross earnings);

---

<sup>2</sup> Ibid 1

- (b) \$1,000 KiwiSaver kickstart; and
- (c) Correct PAYE on Mr Nicholas' total gross earnings whilst employed by Point to Point.

[16] Mr Nicholas says that his inquires with IRD have determined that these orders have also not yet been complied with. Accordingly, within 28 days of the date of this determination Point to Point is ordered to comply with paragraph [38] (a) – (c) of the substantive determination.

### **Costs**

[17] As Mr Nicholas represented himself there is no issue to legal costs but he is entitled to be reimbursed for his filing fee for this compliance order application. Point to Point is therefore ordered to pay Mr Nicholas \$71.56 to reimburse him for the filing fee. For the avoidance of doubt this is in addition to the filing fee that Mr Nicholas was previously awarded as per paragraph [37](e) of the Authority's substantive determination.

**Rachel Larmer**  
**Member of the Employment Relations Authority**