



Employment Court of New Zealand

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O'Leary v Umbrella Multimedia Limited (in liquidation) [2022] NZEmpC 208 (24 November 2022)

Last Updated: 29 November 2022

IN THE EMPLOYMENT COURT OF NEW ZEALAND WELLINGTON

I TE KŌTI TAKE MAHI O AOTEAROA TE WHANGANUI-A-TARA

[\[2022\] NZEmpC 208](#) EMPC 159/2022

IN THE MATTER OF an application for a compliance order and

fine

BETWEEN ANDIE O'LEARY

Plaintiff

AND UMBRELLA MULTIMEDIA LIMITED (IN LIQUIDATION)

First Defendant

AND KEVIN LAULU (ALSO KNOWN AS VIKA TO'OALA)

Second Defendant

Hearing: On the papers

Appearances: B Laracy, advocate for plaintiff

No appearances for first or second defendants

Judgment: 24 November 2022

JUDGMENT OF JUDGE J C HOLDEN

[1] Ms O'Leary was employed by Umbrella Multimedia Ltd (Umbrella Multimedia) in 2020. She took proceedings against Umbrella Multimedia in the Employment Relations Authority (the Authority) claiming that she had been constructively and unjustifiably dismissed and that she was due unpaid wages, holiday pay and commissions. Umbrella Multimedia failed to engage with the Authority's

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process. In a determination dated 8 October 2021, the Authority accepted Ms O'Leary's claim and ordered Umbrella Multimedia to pay her:1

(a) \$12,458.93 (gross) for lost wages as a result of the dismissal; and

(b) \$20,000.00 as compensation pursuant to [s 123\(1\)\(c\)\(i\)](#) of the [Employment Relations Act 2000](#) (the Act); and

(c) \$8,448.91 for unpaid wages, holiday pay and commission; and

(d) \$4,500.00 as a contribution towards Ms O’Leary’s costs.

[2] As Umbrella Multimedia failed to make payments according to the determination, Ms O’Leary filed for compliance in the Authority and named Mr Kevin Lauu as a party.

[3] Mr Lauu is, or was, a director of Umbrella Multimedia and was named as a person involved in the breaches by Umbrella Multimedia and therefore liable in respect of the breaches of employment standards.² Mr Lauu is also known as Mr Vika To’oala.

[4] In a determination dated 20 April 2022, the Authority made a compliance order against Umbrella Multimedia for payment of the full sum owing. It also made a compliance order against Mr Lauu that should Umbrella Multimedia be unable to pay Ms O’Leary the sums awarded to her, then Mr Lauu was to personally pay Ms O’Leary \$8,448.91, for the unpaid wages, holiday pay and commission, with payment to be made no later than Tuesday 17 May 2022.

[5] In addition, the Authority ordered that Umbrella Multimedia and Mr Lauu were jointly and severally liable to pay a further \$3,500 in costs.³ The compliance orders have not been complied with.

¹ *O’Leary v Umbrella Multimedia Ltd* [\[2021\] NZERA 442 \(Member Loftus\)](#).

² [Employment Relations Act 2000, s 142Y](#).

³ *O’Leary v Umbrella Multimedia Ltd* [\[2022\] NZERA 150 \(Member Loftus\)](#) at [33].

The Court may fine Mr Lauu

[6] Ms O’Leary filed proceedings in the Employment Court seeking:

- (a) a compliance order against both Umbrella Multimedia and Mr Lauu for non-compliance;
- (b) a fine against both Umbrella Multimedia and Mr Lauu for non-compliance;
- (c) interest; and
- (d) costs.

[7] She also asked the Court to issue a strong warning to the defendants that further non-compliance may lead to sequestration of property and/or imprisonment.

[8] It transpires that Umbrella Multimedia is now in liquidation, and the liquidator has not consented to the proceedings continuing against him.⁴

[9] Ms O’Leary has been informed that there is little chance of her obtaining any funds through the liquidation process. She says that no payment has been received.

[10] No statement of defence has been filed by Mr Lauu. He was invited to contact the Court registry but has not done so. The matter now proceeds by way of formal proof.

[11] The Court’s power to order compliance is set out in [s 139](#) of the Act. The Court may make compliance orders where any person has not observed or complied with any provision of [Part 8](#) of the Act or any determination, direction or requirement made or given under the Act by the Court.⁵ It does not have the power to order that a person complies with a compliance order made by the Authority.

⁴ [Companies Act 1993, s 248\(1\)\(c\)](#).

⁵ [Employment Relations Act 2000, s 139\(1\)](#).

[12] It is, of course, open to Ms O’Leary to enforce the orders of the Authority in the usual way, through the Courts of general jurisdiction, including claiming interest on the amounts outstanding.

[13] The Court does, however, have powers under [s 140\(6\)](#) where any person has failed to comply with a compliance order made by the Authority under [s 137](#) of the Act. Those powers include that the Court may:

- (a) order that the person in default be sentenced to imprisonment for a term not exceeding three months;
- (b) order that the person in default be fined a sum not exceeding \$40,000;
- (c) order that the property of the person in default be sequestered.

[14] As noted, Ms O’Leary seeks a fine against Mr Lauu.

Sanction appropriate

[15] The breach of the compliance order is serious, and a fine is appropriate.

[16] The factors that are relevant in assessing the level of a fine include the nature of the default (deliberate or wilful), whether it is repeated, without excuse or explanation, and whether it is ongoing or otherwise.⁶ The Court will also consider any steps taken to remedy the breach together with the defendant’s track-record. It will have regard to proportionality, bearing in mind the sums outstanding and the respective circumstances of the employer and the employee, including their financial circumstances.⁷

[17] No explanation has been provided by Mr Lauu for the default. No suggestion for payment or attempt at part-payment has been made. It seems he has simply not engaged with the process at all.

6. *Peter Reynolds Mechanical Ltd v Denyer (Labour Inspector)* [\[2016\] NZCA 464](#), [\[2017\] 2 NZLR 451](#) at [\[75\]](#)–[\[76\]](#).

7 At [\[76\]](#); and *Gates v DC Cladding and Re-Clad Solutions Ltd* [\[2020\] NZEmpC 176](#) at [\[18\]](#).

[18] The amounts have now been outstanding from Umbrella Multimedia since October 2021. The compliance order against Mr Lauu was effective from May 2022.

[19] The situation with Ms O’Leary is not an isolated one; not dissimilar facts were raised in the Authority in another determination where, likewise, Umbrella Multimedia failed to engage.⁸

[20] Having regard to previous cases of the Court, I consider that the fine should be

\$10,000.⁹

[21] The Court may order that part of the fine be paid to Ms O’Leary. In all the circumstances, I consider that it would be just to order that Mr Lauu pays \$7,500 to Ms O’Leary, recognising that she has had to go through the steps required to get this far.

[22] Accordingly, Mr Kevin Lauu (also known as Vika To’oala) is ordered to pay a fine of \$10,000. Of that sum \$7,500 is to be paid to Ms O’Leary with the remainder of \$2,500 to be paid to the Crown.

Costs awarded

[23] Ms O’Leary seeks an order for costs. In the circumstances, there is an order for costs of \$2,000, also payable by Mr Lauu to Ms O’Leary.

J C Holden Judge

Judgment signed at 3 pm on 24 November 2022

⁸ *Hayes v Umbrella Multimedia Ltd* [\[2022\] NZERA 161](#).

9. *Gates v DC Cladding and Re-Clad Solutions Ltd*, above n 7; *Cooper v Phoenix Publishing Ltd* [\[2020\] NZEmpC 111](#), [\[2020\] ERNZ 332](#) at [\[28\]](#)–[\[33\]](#); *Domingo v Suon* [\[2017\] NZEmpC 23](#), [\[2017\] ERNZ 82](#); and *Carruthers v Brommel Roofing Ltd* [\[2020\] NZEmpC 22](#).

