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ORDER PROHIBITING PUBLICATION
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TO IN THIS DETERMINATION

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Ashley O'Connell (Applicant)
AND IPLAY Palmerston North Limited (Respondent)
REPRESENTATIVES Brenda Osborne representing the Applicant
No Appearance for the Respondent
MEMBER OF AUTHORITY P R Stapp
INVESTIGATION MEETING Palmerston North, 29 September 2004
DATE OF DETERMINATION 30 September 2004

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This is an application for enforcement.

The Facts

[2] The parties signed a record of settlement in mediation services provided by the Department of Labour on March 1 2004. I am satisfied that the record of settlement was signed under section 149 of the Employment Relations Act 2000. The record of settlement is confidential.

[3] The settlement made provision for Mr. O'Connell to be paid a compensatory sum within 21 days of the date of the signing of the settlement. By March 26 2004 the applicant had not been paid the agreed sum. The applicant says that his representative contacted the Department of Labour mediation services for assistance and he understood that the mediator would contact the respondent for payment.

[4] The applicant says that a cheque was received on April 2 2004 by Post without an explanation and no correspondence.

[5] The applicant says that he made arrangements with his father (Michael O'Connell) to bank the cheque. The cheque was banked. However on April 6 2004 the applicant was notified that the cheque was in default¹.

¹ Notice of Dishonoured Item ANZ 6 April 2004

[6] Further enquiries were made with the Department of Labour for assistance between 22 April 2004 and 28 April 2004. Nothing further was achieved in obtaining payment from the Respondent. Therefore on May 4 2004 the applicant's representative put the respondent on notice requesting payment by May 18 2004 or enforcement would be applied for. No payment and no response have been obtained from the Respondent.

[7] Another request for payment was made on 25 May 2004 before sending the application for enforcement to the Authority².

These Proceedings

[8] There has been no appearance by the Respondent³. The Respondent has not lodged a statement in reply. The matter was not directed to mediation because under section 159 of the Act I determined that the use of mediation would not contribute constructively to resolve the matter. I reached this conclusion having regard to the attempts made by the applicant and his representative to obtain payment and that they had properly used the mediation services available from the Department of Labour and were unsuccessful dealing with the Respondent.

[9] The Respondent has been properly served with the application and notice of the investigation meeting. The Respondent replied to the Authority on or around the 9 August enquiring what the problem was as that the applicant had been paid. Nothing has been received since.

[10] The meeting was scheduled to start at 10.00 am but did not formally get under way until 10.15 am for the respondent to appear. In the absence of any good cause I decided to continue with the investigation meeting in public without the Respondent – see clause 12 of Schedule 2 of the Employment Relations Act 2000. It was not until after the investigation meeting had concluded that the Authority become aware that Brent Corlett a director of the company had attended the Department of Labour in Palmerston North and the Authority's office in Wellington was advised – at 10.35 am.

Determination of the matter

[11] I am satisfied without any evidence to the contrary that Mr. O'Connell has not been paid the sum agreed under a record of settlement signed by the parties and a Department of Labour mediator under section 149 of the Act. I am satisfied that attempts have been made to obtain payment from the respondent without any success or indeed any cooperation from the respondent.

[12] The Respondent appears to have deliberately acted to have little to do with these proceedings. This is supported by the Respondent's failure to properly lodge a statement in reply and to discuss the matter with a support officer in the Authority. Furthermore the Respondent appears to have shown no initiative towards the applicant and his representative in building some relationship to clarify and avoid this situation from developing. Moreover the Respondent was served with the notice of investigation meeting, and its representative (Brent Corlett who signed the record of settlement) arrived at the investigation meeting late and after the meeting had concluded and everyone had left. I conclude on the basis of the evidence before me that the Respondent has

² Letters produced dated 25 May 2004 and 4 May 2004.

³ After the investigation meeting the Authority was informed that Brent Corlett arrived at the Department of Labour in Palmerston North and that he had later made his way to the investigation meeting scheduled at another venue.

deliberately failed to exercise any courtesy in trying to contact the Authority before the investigation meeting started about being late.

[13] I have concluded that the default by the Respondent on paying the sum agreed under the record of settlement requires enforcement.

[14] Therefore it is open to me to resolve this problem for the applicant by way of issuing a compliance order, whereby the requirements for such an order have been met⁴.

[15] I order the Respondent (IPLAY Palmerston North Limited) to pay Ashley O'Connell the sum agreed in the record of settlement under clause 3 of the record of settlement. The sum is to be paid by the Respondent by 4 pm on Monday 11 October 2004⁵.

[16] The Respondent's behaviour in this matter is far from being impressive and does not reflect well on the responsibility of its director involved (Brent Corlett) who has not honoured the record of settlement that he signed by ensuring that the payment was honoured. The Respondent and Mr. Corlett need to understand the seriousness of the company's situation. If the required payment is not made the Respondent risks (through its directors) any person in default facing imprisonment for a term not exceeding 3 months or being fined a sum not exceeding \$40,000 or sequestration of property (see sections 145 (5) and (6) of the Act).

[17] This is a matter for costs. The applicant has been unnecessarily put to the expense of these proceedings. The claim for costs is \$1,480.00 (including GST) plus the filing fee of \$70. I am satisfied that the costs have been reasonably incurred in pursuing this matter (filing, statement of problem, statement and documents produced). I have excluded GST because it is not claimable in the Authority. I order the Respondent to pay Mr. O'Connell the sum of \$1,315.55 contribution to his costs reasonably incurred plus the filing fee of \$70.

[18] Finally for completeness and with the applicant's agreement I order that the details of the record of settlement, including that a sum for payment had been agreed, be prohibited from publication to preserve the parties' agreement on confidentiality.

P R Stapp
Member of the Authority

⁴ Sections 137 (1) (a) (iii) and 137 (2) of the Act.

⁵ Section 137 (3) of the Act.