

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2022] NZERA 612  
3197443

BETWEEN                      JUYEON OH  
   Applicant  
  
AND                                SSEONZ LIMITED  
   Respondent

Member of Authority:        Rachel Larmer  
  
Representatives:              Daniel Kim for the Applicant  
   Stella Seo for the Respondent  
  
Investigation Meeting:        On the papers  
  
Further Information:          16 November 2022 from the Applicant  
   No Appearance by Respondent  
  
Date of Determination:        21 November 2022

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The Applicant, Ms Juyeon Oh lives in Korea. The Respondent, Sseonz Limited runs the restaurant Ichigo Ichie, which is a Japanese Kitchen and Sake Bar in Rothesay Bay Auckland (“*the restaurant*”).

[2]     Ms Stella Seo is the sole director and shareholder of the Respondent. She informed the Authority on 18 October 2022 that the restaurant was about to permanently close.

[3]     In a substantive determination dated 7 July 2022 the Authority ordered the Respondent to pay Ms Oh \$5,773.88, consisting of:<sup>1</sup>

- (a)     \$37.80 wage arrears (for a two hours work trial she did);

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<sup>1</sup>     *Oh v Sseonz Ltd* [2022] NZERA 298 at [39].

- (b) \$3.02 holiday pay on the wage arrears she was owed for the work trial;
- (c) \$661.50 pay in lieu of notice;
- (d) \$5,000 distress compensation; and
- (e) \$71.56 filing fee.

[4] This amount was to be paid within 28 days of the determination, so it was due to have been paid by 5 August 2022.

[5] The Respondent has not paid anything to the Applicant. The Applicant now seeks a compliance order.

### **Authority's investigation**

#### *Grant of urgency and abridgment of time*

[6] The Authority granted this matter urgency due to the imminent closure of the restaurant. Time for filing the Statement in Reply was abridged to 7 days, given the urgency of this matter.

#### *No Statement in Reply or leave application to file Statement in Reply out of time*

[7] The Respondent has not filed a Statement in Reply.

[8] Sseonz was informed that it needed to seek leave to file a Statement in Reply out of time, but it has not done so.

[9] Ms Seo was informed during the telephone conference that the Authority would be treating this matter with urgency so it was critical that the Respondent filed its Statement in Reply within the required time.

[10] The Respondent has not engaged with the Authority's investigation into Ms Oh's application for a compliance order.

#### *On the papers investigation*

[11] As discussed, and agreed, with the parties during the telephone conference held on 31 October 2022, the compliance order application has been determined 'on the papers'.

*Re-opening application*

[12] On 5 September 2022 Sseonz Limited lodged an application to re-open the substantive determination.<sup>2</sup> That was opposed by the Applicant.

[13] This was investigated by the Authority calling for the Respondent to provide details of the new evidence and by discussing the basis of the Respondent's re-opening application in detail with the parties, and more particularly Ms Seo, during a telephone conference held on 31 October 2022.

[14] Mr Kim, who is a New Zealand based friend of Ms Oh's attended on her behalf and Ms Seo attended on behalf of the Respondent.

[15] After discussing the basis of the re-opening application with the parties, and questioning Ms Seo in detail about the supposed new evidence Sseonz wanted to obtain and produce, the Authority gave the parties its preliminary indication that the re-opening application was unlikely to succeed because:

- (a) There was no 'new evidence' because the proposed evidence was available at the time of the substantive investigation;
- (b) Ms Seo had participated in the phone calls Sseonz wanted to introduce, so she had personal knowledge of them prior to the investigation meeting;
- (c) Ms Seo could not identify what particular part of Ms Oh's phone calls Sseonz wanted to rely on, or how that was relevant to the substantive determination that had been made. That made the request for the phone call information from the applicant look like a 'fishing expedition' because Ms Seo should have been able to tell the Authority what evidence in the phone call was relevant to the re-opening application;
- (d) Ms Seo had already made the points to the Authority during the substantive investigation meeting that she wanted to rely on in the re-opening application, so the substantive determination had already accounted for that evidence;
- (e) The substantive determination concluded that Ms Oh's dismissal was substantively justified but carried out in a procedurally unfair manner that had

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<sup>2</sup> *Sseonz v Oh* AEA 3181559.

not meet statutory good faith requirements. Those findings did not rely on an assessment of Ms Oh's credibility, as the findings the Authority made about those issues were based on its assessment of Ms Seo's evidence about such matters;

- (f) The attack on Ms Oh's credibility that Sseonz wanted to rely on to support its re-opening application would not have been material, because the determination had been based on Ms Seo's evidence. Ms Seo had also attacked Ms Oh's credibility during the substantive investigation meeting so the Authority was aware that Sseonz wanted the Authority to make adverse credibility findings against Ms Oh before it issued its substantive determination;
- (g) The re-opening appeared to be a 'back door' attempt to challenge the substantive determination because SSeonz disagreed with it, instead of a situation in which newly discovered evidence had raised legitimate concern that an injustice had occurred;
- (h) It also appeared to be an attempt to avoid paying Ms Oh the modest amount of money that she had been awarded by the Authority in July 2022.

[16] The Authority highlighted the various evidential and legal problems Sseonz faced in respect of its re-opening application. Ms Seo was given time to consider the Authority's feedback and preliminary indication, and time to take advice if need be, before the re-opening application was determined.

[17] Sseonz withdrew its re-opening application on 4 November 2022, so that matter has now been closed by the Authority.

### *Evidence*

[18] The Applicant (via her representative) confirmed no payments had been made as at 15 November 2022. Sseonz did not disputed that evidence.

### **Issues**

[19] The following issue are to be determined:

- (a) Has the Respondent paid the Applicant the money she was awarded?
- (b) If not, should a compliance order be issued?

(c) What if any costs and disbursements should be awarded?

**Has the Respondent paid the Applicant the money she was awarded?**

[20] The Authority finds that the Respondent has not paid the Applicant any of the money she was awarded. The Respondent has not responded to the Applicant's request to be paid the money she was awarded by the Authority on 7 July 2022.

**Should a compliance order be issued?**

[21] The Authority has engaged with Ms Seo during two case management conferences, by email and during the substantive investigation meeting. She has made it clear during all of these communications that she is very resistant to paying Ms Oh anything.

[22] The Respondent has breached the Authority's order that it had to pay Ms Oh \$5,773.88 by 5 August 2022. No challenge has been filed and there were no legitimate grounds on which the substantive investigation should be re-opened. Ms Oh's request to be paid has been ignored, as has this compliance order application.

[23] The Authority considered it unlikely that Ms Oh will be paid anything unless a compliance order was issued. It is therefore necessary and appropriate to issue a compliance order to compel Sseonz to pay Ms Oh the money she is owed.

**Order**

[24] The Respondent is ordered to comply with paragraph [39] of the substantive determination, by paying Ms Oh \$5,773.88 within 14 days of the date of this determination. The timeframe of 14 days selected based on Ms Seo's advice that the restaurant is about to permanently close.

**What if any costs and disbursements should be awarded?**

[25] Because Ms Oh was represented by a friend she did not incur legal costs. However, as the successful party, Ms Oh is entitled to be reimbursed \$71.56 for her filing fee.

[26] Accordingly, Sseonz Limited is ordered to reimburse Ms Oh \$71.56 for her filing fee.

**Outcome**

[27] Within 14 days of the date of this determination, Sseonz Limited must pay Ms Oh \$5,845.44 , being \$5,773.88 in order to comply with the money she was awarded in the substantive determination plus \$71.56 to comply with the order in this determination to reimburse the applicant for her the filing fee.

**Consequences of breaching the Authority's compliance order**

[28] If Sseonz fails to pay Ms Oh the money it has been ordered to pay her within 14 days of the date of this determination, then Ms Oh may apply to the Employment Court under s 139 of the Act to prevent Sseonz's breach of the Authority's compliance order determination.

[29] In which case, the Court may elect to exercise its power s under s 140 of the Act to (among other things):

- (a) Order imprisonment of the person in default for not more than three months;
- (b) Impose a fine not exceeding \$40,000 on the person in default; or
- (c) Order that the property of the person in default be sequestered.

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