

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2014] NZERA Christchurch 108  
5458786

BETWEEN

JACKSON ORANGE  
Applicant

A N D

THE HOME THEATRE  
STORE  
Respondent

Member of Authority: Helen Doyle

Representatives: Ernie Tait, Counsel for Applicant  
Andrew Raines, Advocate for Respondent

Investigation Meeting: 16 July 2014 at Christchurch

Further Information  
Provided: 16 and 21 July 2014

Date of Determination: 22 July 2014

---

**DETERMINATION OF THE AUTHORITY**

---

- A Andrew Raines trading as The Home Theatre Store is to comply with the settlement agreement dated 18 February 2014 and signed by a mediator on 21 March 2014 and pay to Jackson Orange:**
- (i) \$1,100 under clause 3 of the settlement agreement,**
  - (ii) \$1049.13 gross under clause 4 of the settlement agreement.**
- B Interest is payable on the amount of \$2149.13 from 31 March 2014 until the date of payment at 5%.**
- C Costs have been awarded in the sum of \$600 together with the filing fee of \$71.56.**

**Employment relationship problem**

[1] Jackson Orange has applied to the Authority for an order requiring The Home Theatre Store to comply with the terms of the settlement agreement dated 18 February 2014.

[2] The settlement agreement was signed by a mediator employed to provide mediation services by the Ministry of Business, Innovation and Employment pursuant to s 149 (1) and (3) of the Employment Relations Act 2000 (the Act) on 21 March 2014. The mediator certified that the parties understood and accepted that the settlement agreement was binding and enforceable and that the parties had advised that no minimum statutory entitlements had been foregone in the reaching of the settlement.

[3] The Home Theatre Store is the description of the respondent in the settlement agreement and matches the name of Mr Orange's employer in his individual employment agreement. The Home Theatre Store is not a legal entity. It is not a limited liability company. The settlement agreement was signed by Andrew Raines who describes himself in that agreement as a director. In those circumstances Mr Raines is liable to meet any payments under the settlement agreement.

[4] The settlement agreement recorded, amongst other matters, in clause 3 that Mr Orange would be paid a compensatory sum of \$1,100 pursuant to s 123 (1) (c) (i) of the Act and that payment would be made on a denial of liability basis. Clause 4 provides that Mr Orange would be paid all outstanding contractual and statutory entitlements up to and including 5 February 2014. Clause 5 provides that the payments referred to were to be made within 7 days of the mediator signing the agreement by direct credit to Mr Orange's bank account.

[5] Mr Orange says he has not been paid the sum of \$1,100 which was agreed to be paid to him in clause 3 of the agreement within 7 days of the mediator signing the agreement. Further, Mr Orange says that he has not been advised what is owing to him for outstanding contractual and statutory entitlements up to and including 5 February 2014 and has not received any payment for those entitlements in terms of the settlement agreement.

**The Issues**

- [6] The issues for the Authority to determine in this matter are as follows:
- (a) Has there been a breach of the settlement agreement and if so, in what respect?
  - (b) Should the Authority order compliance with the settlement agreement?
  - (c) Is Mr Orange entitled to interest on the outstanding money?
  - (d) If there has been a breach should there be an award of costs.

**Has there been a breach of the settlement agreement?**

[7] Mr Raines accepted that payment has not been made in terms of the settlement agreement under clauses 3 and 4. He said when he gave his evidence that this was because his advocate did not follow his instructions in preparing the settlement agreement although he had signed the settlement agreement. The main concern it appeared from his evidence was that the contractual and statutory entitlements had been separated from the compensatory sum payable under the agreement of \$1,100.

[8] I do not find that concern justifies non-compliance with the settlement agreement.

[9] There has been a breach of the settlement agreement by Mr Raines.

[10] There is no difficulty with the calculation of the amount owing to Mr Orange under clause 3. It is \$1,100. The more complicated issue is the calculation of the amount owing under clause 4 of the settlement agreement. The Authority, in a telephone conference with Mr Tait and Mr Raines to set an investigation meeting date, discussed the provision of all relevant time and wage records and the Inland Revenue Department's records of earnings. This information was not provided before the investigation meeting on 16 July 2014.

[11] Mr Orange agreed when he gave evidence that he had taken some leave so the calculation could not simply be based on 8% of his gross earnings for the period he worked from 6 August 2013 to 5 February 2014. In those circumstances the Authority gave both parties until 4pm on Friday 18 July 2014 for pay slips and IRD information to be provided.

[12] Mr Tait provided on behalf of his client all pay slips which were in his client's possession, together with IRD information on 16 July 2014. Mr Raines provided on Monday 21 July 2014 a number of pay slips and a breakdown of what he says is owing to Mr Orange by way of holiday pay and payment for alternative days not taken.

[13] Mr Raines breakdown shows that Mr Orange had taken 17 hours of annual leave and had a balance owing of accrued annual leave of 60.80 hours, or 7.60 days. Additionally Mr Orange was owed money for payment for alternative days for statutory holidays worked. That was shown on the information provided by Mr Raines to be 12.5 hours owing.

[14] I have calculated holiday pay and payment for alternative days from the payslips provided by both Mr Tait and Mr Raines and Mr Raines' additional information. I have calculated entitlements on the basis of Mr Orange's ordinary time rate of \$13.75.

[15] I note that Mr Orange was entitled under the settlement agreement to be paid his statutory entitlements up to and including 5 February 2014. Mr Raines has only calculated accrued annual leave to 29 January 2014. Leave accrued at about three hours a week so I have added a further 3 hours in those circumstances to take the entitlement to 5 February 2014. I have accepted Mr Raines figures for alternative days.

[16] Mr Orange is owed holiday pay calculated on the basis of 63.80 hours at \$13.75 per hour in the sum of \$877.25 gross. Mr Orange is owed payment for alternative days for working on public holidays for 12.50 hours at \$13.75 per hour in the sum of \$171.88. The total amount owing under clause 4 of the settlement agreement is the sum of \$1049.13 gross.

### **Compliance Order**

[17] Mr Raines owes Mr Orange the amounts of \$1,100 and \$1049.13. Mr Orange is entitled to an order that Mr Raines comply with clause 3 and 4 of the settlement agreement and pay those amounts to him.

[18] Andrew Raines trading as The Home Theatre Store is ordered under s 137 to comply with the settlement agreement. He must pay the sums of \$1,100 without deduction under clause 3 of the settlement agreement and \$1049.13 gross in accordance with clause 4 of the settlement agreement within 14 days of this determination.

### **Interest**

[19] There has been no penalty claimed for the breaches of the settlement agreement. Mr Tait did make a request for interest to be payable on the monies found owing under the agreement as Mr Raines has had the benefit of the use of the money.

[20] The Authority does have the power under clause 11 of the second schedule to the Employment Relations Act 2000 in cases involving the recovery of money to order the inclusion of interest. The settlement agreement specifically provided that payments would be made within seven days of the mediator signing the agreement by way of direct credit to Mr Orange's bank account. The settlement agreement was signed by the mediator on 21 March 2014 and in terms of clause 5 of the settlement agreement payment should have been made by 28 March 2014.

[21] Allowing for a weekend from 28 March 2014 I find that interest should be payable on the amount of \$2149.13 from 31 March 2014 to the date of payment at the rate of 5% per annum as prescribed under s 87(3) of the Judicature Act 1908.

### **Costs**

[22] Mr Tait provided the Authority with a chronology of letters and emails sent in an attempt to have Mr Raines comply with the settlement agreement. This included Mr Tait's personal assistant hand delivering a trust account deposit slip to Mr Raines to assist in compliance. It is clear from looking at the chronology that expenses have been incurred in trying to achieve compliance with the settlement. Mr Tait advised the Authority that in terms of the matter involving Mr Orange there was \$1,500 of unrecorded time of which he said \$600 related directly to the enforcement matter.

[23] I am satisfied that it is appropriate for an order for costs to be made in this matter.

[24] I order Andrew Raines to pay to Jackson Orange the sum of \$600 in costs together with the sum of \$71.56 being the filing fee.

Helen Doyle  
Member of the Employment Relations Authority