

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 93/10
5301813

BETWEEN DAVID REGINALD PHILLIPS
Applicant

AND AGRICULTURAL AND
LIFESTYLE MACHINERY
NEW ZEALAND LIMITED
Respondent

Member of Authority: P R Stapp

Representatives: Mr Phillips
John Murray Director for Respondent

Investigation Meeting: By telephone conference 7 May 2010, at Wellington

Determination: 7 May 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The employment relationship problem is about the respondent's failure to pay Mr Phillips a sum of money under a record of settlement signed off by a Department of Labour Mediator.

[2] The respondent claimed it can not afford to pay and any payments will have to be made by instalments (file note with support officer on file). Mr Murray has suggested payment by instalment of \$1,000 per month commencing on the 20th of this month (telephone conference).

[3] There has been no statement in reply filed by the respondent. The respondent's response lacked any details of the company's financial situation. Mr Murray says that the situation the company is in has been slow and uneven. His

general comment is that the company cannot afford paying the full amount and that advice from the accountant has been to pay \$1,000 per month.

Issues

[4] Should the respondent's failure to pay an agreed sum of money be remedied by the issuing of a compliance order? If so, should any terms apply?

The facts

[5] The correct respondent's name is Agricultural & Lifestyle Machinery New Zealand Limited. The proceedings are amended to correct the name of the respondent under s 221 of the Employment Relations Act where the name has been referred to incorrectly. Mr Murray accepted that the legal name of the respondent is not in dispute.

[6] On 16 February 2010 a mediator (Mr Rod Trott) from the Department of Labour signed off agreed terms of settlement reached by Mr Phillips, and Mr Murray for and on behalf of the respondent as a director. The settlement involved the parties being unable to reach an agreement on a quantum and they authorised the mediator to make a final and binding decision on a sum, and that by signing the agreement the parties confirmed an agreement to the process. A record of settlement has been produced. Both parties acknowledge they signed the agreement: the applicant in person and Mr Murray for and on behalf of the company as a director. Under the terms of the settlement the payment was due 14 days from the date of the settlement: by 2 March 2010. The mediator decided that the respondent was to pay to the applicant the sum of \$5,000 in terms of s 123 (1) (c) (i) of the employment Relations Act.

[7] No payment has been made, and no arrangements put in place with any agreement since the record of settlement was signed off and the statement of problem was filed in the Authority.

[8] There have been some attempts made to resolve the problem by Mr Phillips using the mediator to get the payment and to find some answer. Nothing since then

has developed between the parties and the mediator, except that Mr Phillips has filed in the Authority for a compliance order and the payment in full as no arrangements were put in place to honour the agreement.

Determination

[9] I have considered mediation as I must under s 159 of the Employment Relations Act. I have not directed the parties to take their employment relationship problem on compliance to any further mediation because of the costs and time involved. Also because Mr Phillips has already made attempts to use the service of the Department and without any success from the respondent.

[10] There is a clear breach of the terms under which payment was required. There has been no payment made.

Orders of the Authority

[11] I order Agricultural & Lifestyle Machinery New Zealand Limited to comply and pay Mr David Phillips the sum of \$1,000 per month starting from 20 May 2010 until the full sum of \$5,000 is paid off under s 137 of the Act (which includes the requirement to specify a time: s 137 (4)). The order for instalments has been made under s 138 (4A) of the Act whereby I accept that the financial position of the employer requires it.

[12] I also order Agricultural & Lifestyle Machinery New Zealand Limited to pay Mr Phillips the \$70 filing fee. The reason for my decision is because Mr Phillips has been put to the cost of bringing the application upon the default and his wish to get full payment. Without the intervention of the Authority the acknowledgement of the sum owing and the information of the need for an instalment plan would not have been dealt with. The respondent's instalment plan is a trade off to enable Mr Phillips get paid and to meet the needs of the respondent because of its financial position, which has denied Mr Phillips the immediate use of the money.

[13] Unless both parties have an arrangement in place for the payments to be made bank to bank I order that Agricultural & Lifestyle Machinery New Zealand Limited is

to pay Mr Phillips his instalments and the filing fee by cheque at the address for service provided in the statement of problem. Leave is granted for any variation to this term of the order upon details being provided and submissions being made.

P R Stapp
Member of the Employment Relations Authority