

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2014] NZERA Christchurch 39
5435840

BETWEEN JACQUELINE PONTIFEX
 Applicant

A N D DEAN BUCKERIDGE
 Respondent

Member of Authority: David Appleton

Representatives: Applicant in person
 Respondent in person

Investigation Meeting: 28 February 2014 by telephone

Submissions Received: 28 February 2014 from Applicant and Respondent

Date of Determination: 3 March 2014

DETERMINATION OF THE AUTHORITY

I order Mr Buckeridge to pay to Ms Pontifex the sum of \$3,400 by no later than 24 March 2014

Employment relationship problem

[1] The applicant, Ms Pontifex, seeks payment by her former employer, Mr Buckeridge, of the amount of \$3,400, being the sum which she says Mr Buckeridge agreed to pay her in settlement of unpaid wages, holiday and business expenses. The respondent admits that he owes Ms Pontifex this sum.

Background

[2] Ms Pontifex worked for Mr Buckeridge in his architectural practice between 4 December 2012 and 1 March 2013 but was only paid \$3,000 of the \$5,775 that was owed in respect of unpaid wages. Ms Pontifex was also not paid in respect of holiday

pay at the end of her employment, nor in respect of expenses incurred by her on behalf of Mr Buckeridge while employed by him.

[3] The parties took part in mediation on 30 October 2013 and an agreement was reached that Mr Buckeridge would pay Ms Pontifex *the compensatory sum of \$3,400 in terms of s.123(1)(c)(i) of the Employment Relations Act 2000* (the Act). This sum was to be paid by no later than 15 November 2013.

[4] It would appear that Mr Buckeridge failed to sign the record of settlement that was drawn up by a mediator from the Resolution Services of the Ministry of Business, Innovation and Employment. Accordingly, the mediator has also not signed the agreement.

[5] The Authority received Ms Pontifex's application on 9 December 2013, which was sent to Mr Buckeridge the same day. Mr Buckeridge signed to indicate receipt of the documents but has never lodged a statement in reply. On 11 February 2014, the Authority wrote to the parties to arrange a telephone conference.

[6] The telephone conference took place on Friday, 28 February 2014 and, during it, Mr Buckeridge acknowledged that he owed Ms Pontifex the sum of \$3,400 in respect of the agreement that had been reached between them but proposed that he discharge his obligation to pay the sum by way of instalments of \$500 per month, the first payment to be made on 24 March 2014. Ms Pontifex rejected this proposal, saying that she had already waited nearly a year for payment of what was due to her (referring to when she was last employed by Mr Buckeridge).

[7] In light of the fact that Mr Buckeridge fully accepts responsibility for payment of the sum due, it is not necessary for me to undertake any further investigation of Ms Pontifex's application. I am therefore able to proceed to issue a determination without delay.

Determination

[8] I am satisfied that a binding accord and satisfaction was reached between the parties during a mediation session on 30 October 2013, organised under the auspices of the Resolution Services. However, the Authority does not have jurisdiction to order compliance pursuant to s.137 of the Act, as the agreement does not fall within the scope of s.151, because the requirements of s.149(3) have not been satisfied.

Section 149(3) of the Act makes clear that terms of settlement are final and binding, and enforceable by the parties only when a mediator has obtained an affirmation referred to in s.149(2) of the Act. It does not appear that this has occurred; the copy of the record of settlement put before the Authority was not signed by the mediator and correspondence disclosed suggests that the mediator was unable to get Mr Buckeridge to sign the record of settlement.

[9] Despite this lack of jurisdiction of the Authority to enforce the agreement pursuant to s.137 of the Act, I consider that the Authority has the jurisdiction to do so pursuant to s.161(1)(r). This provides as follows:

The Authority has exclusive jurisdiction to make determinations about employment relationship problems generally, including –

...

(r) any other action (being an action that is not directly within the jurisdiction of the court) arising from or related to the employment relationship or related to the interpretation of this Act (other than an action founded on tort).

[10] The agreement reached between the parties that Mr Buckeridge would pay to Ms Pontifex the sum of \$3,400 by 15 November 2013 was an agreement related to the employment relationship (as it settled Ms Pontifex's potential actions against Mr Buckeridge for unpaid wages, holiday pay and business expenses). Accordingly, the agreement between the parties falls within s.161(1)(r) of the Act.

[11] Having established that the Authority has the jurisdiction to consider Mr Buckeridge's breach of the agreement to pay \$3,400 to Ms Pontifex, I rely on s.162(c) of the Act to order payment. That is, pursuant to the Contractual Remedies Act 1979, I am satisfied that Mr Buckeridge has breached the agreement in not making the payment he promised to Ms Pontifex; that, by her conduct in issuing an application in the Authority, Ms Pontifex has cancelled the agreement between her and Mr Buckeridge, and that the Authority may therefore make an order for Mr Buckeridge to make a payment to Ms Pontifex in such sum as it thinks just.

[12] That sum is \$3,400. I have considered Mr Buckeridge's request that payment be made in monthly instalments of \$500 each, but am mindful of the following facts:

- a. Ms Pontifex opposes such a proposal due to the delay that she has already suffered;

- b. Ms Pontifex has been owed wages, holiday pay and reimbursement of expenses for around a year;
- c. Mr Buckeridge breached an agreement to make a payment in satisfaction of his debts;
- d. Mr Buckeridge failed to lodge a statement in reply; and
- e. By 28 February 2014, had made no payment of even part of the \$3,400 owed.

[13] In view of these facts, I believe that Mr Buckeridge has had ample opportunity to make the payment due, even in instalments, but has not made any payment at all. It would prejudice Ms Pontifex to make her wait any further period of time before payment in full is made to her.

[14] I would comment, finally, that the agreement recorded in the record of settlement seen by the Authority was to pay Ms Pontifex the compensatory sum of \$3,400 pursuant to s.123(1)(c)(i) of the Act. This is the section which provides for payment of compensation to an employee or former employee for humiliation, loss of dignity or injury to their feelings. Awards under this section of the Act are normally paid tax free, as the Inland Revenue Department does not normally treat them as taxable payments. However, the sum agreed was to be paid, in part, in settlement of wages and holiday pay owed. Such payments are taxable of course.

[15] I am unable to ascertain exactly how the sum of \$3,400 breaks down, as I do not have the information before me. However, in making the order below, I simply note that the Authority does not make any determination as to the taxability of the sum. Ms Pontifex should seek the guidance of the Inland Revenue Department to assist her assess any liability to tax on the payment.

Order

[16] I order Mr Buckeridge to pay to Ms Pontifex the sum of \$3,400 by no later than 24 March 2014.

Costs

[17] Ms Pontifex has incurred the sum of \$71.56, being the lodgement fee in respect of her application to the Authority. I therefore also order that Mr Buckeridge pay to Ms Pontifex that sum within five days of the date of this determination.

David Appleton
Member of the Employment Relations Authority