

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 559  
5437448

BETWEEN ELAINE POVEY  
Applicant

A N D INDEPENDENT CARE  
LIMITED  
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Simon Greening, Advocate for Applicant  
No appearance for Respondent

Investigation Meeting: 9 December 2013 at Auckland

Date of Determination: 9 December 2013

---

**DETERMINATION OF THE AUTHORITY**

---

**Non-appearance of respondent**

[1] Independent Care Limited (Independent Care) failed to file a statement in reply and failed to attend the investigation meeting. I am satisfied that Independent Care was properly served with the statement of problem and subsequent correspondence from the Authority together with a notice of investigation meeting. In those circumstances, I proceeded to investigate the matter in the absence of Independent Care.

**Employment relationship problem**

[2] On 17 September 2013, a Record of Settlement (the settlement) was signed under s.149 of the Employment Relations Act 2000 (the Act). The applicant, Ms Elaine Povey, and the respondent, Independent Care, were parties to the settlement. The settlement was signed by Ms Povey and by Mr Semisi Hutchison,

Director of Independent Care. The settlement was signed by a mediator employed by the Ministry of Business, Innovation and Employment (MBIE).

### Issues

[3] The issue brought to the Authority by Ms Povey relates to non-payment by Independent Care of sums agreed to be paid by it and failure to comply with other terms of the settlement.

[4] The settlement states:

3. *The employer will provide a certificate of service.*
- ...
5. *Independent Care Limited shall pay Elaine Povey the compensatory sum of \$5,000 in terms of s.123(1)(c)(i) of the Employment Relations Act 2000. This amount will be paid to the applicant by way of direct credit in two payments of \$2,500. The first payment will be paid forthwith and the second payment will be made n 14 days.*
6. *The employer will pay any outstanding holiday pay.*

[5] The settlement was certified under s.149 of the Act by the mediator. That certification confirmed that, before signing the agreement, the parties were advised and accepted they understood the effect of s.149(3) of the Act which states that the agreed terms of settlement:

- (a) were final, binding and enforceable; and
- (b) could not be cancelled; and
- (c) could not be brought before the Authority or the Court for review or appeal, except for the purposes of enforcing those terms.

[6] On 30 October 2013, an application for a compliance order was filed in the Authority by Ms Povey claiming that despite requests, Independent Care had failed to provide her with a certificate of service in accordance with clause 3 of the settlement and had failed to pay her the second instalment of \$2500 and outstanding holiday pay in accordance with clause 5 of the settlement.

[7] Independent Care has not filed a statement in reply. Ms Povey says the sum of \$2,500 is still outstanding and that she is owed the sum of \$460.80 gross in outstanding holiday pay. Independent Care has also not provided Ms Povey with a certificate of service.

[8] I am satisfied Independent Care has not complied with the terms of the settlement.

### **Determination**

[9] I therefore make an order that Independent Care is to pay Ms Povey within seven (7) days of the date of this determination, the sum of \$2,500 together with outstanding holiday pay of \$460.80 gross. These sums are to be paid by Independent Care directly into Ms Povey's bank account, details of which have been provided. Further, Independent Care is to provide a certificate of service to Ms Povey within seven days of the date of this determination. The certificate is to be sent to Ms Povey's home address which is known to Independent Care.

[10] For the information of Independent Care, failure to comply with an order such as this one made by the Authority under s.137 of the Act, may provide a basis for an application to be made by Ms Povey to the Employment Court. Where the Court is satisfied that any person has failed to comply with a compliance order under s.137, the Court may, under s.140 of the Act, order remedies, including an order that the person in default be sentenced to imprisonment for a term not exceeding three months and/or a fine not exceeding \$40,000.

### **Costs**

[11] I order Independent Care to pay costs of \$170 and to reimburse Ms Povey the Authority's \$71.56 filing fee.

[12] I also direct that pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000, Ms Povey be provided with a certificate of determination, sealed with the seal of the Authority, recording respectively that Independent Care is ordered to pay Ms Povey the sum of \$2,500 pursuant to s.123(1)(c)(i) of the Act, annual leave of \$460.80, costs of \$170 plus the filing fee of \$71.56.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**