

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 15
5440756

BETWEEN PAUL POWER
 Applicant

A N D ELECTRIC GUYS LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Joey James, Counsel for Applicant
 Angela and Jamie Reid, Directors of Respondent

Investigation Meeting: On the papers

Date of Determination: 16 January 2014

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] On 18 June 2013, the applicant, Mr Paul Power, and the directors of the Electric Guys Limited (Electric Guys), Ms Angela and Mr Jamie Reid agreed to confer on Mr John Wood, Mediator, Ministry of Business, Innovation and Employment, the power to recommend a means of resolving an employment relationship problem between them pursuant to s.149A of the Employment Relations Act 2000 (the Act).

[2] Accordingly, a consent for a mediator recommendation (the recommendation) was signed by Mr Power, and Mr and Mrs Reid as Directors of Electric Guys. The recommendation provided as follows:

We have agreed to confer on John Wood, Mediator, Ministry of Business, Innovation and Employment, pursuant to s.149A of the Employment Relations Act 2000, the power to recommend a means of resolving a problem in respect of our employment relationship. The matter in issue in relation to which a decision is sought is the matters on file 5420694.

[3] The recommendation further stated:

Each party will have until June 27, 2013 to give written notice to the mediator and to the other party that they reject the recommendation. If neither rejects the recommendation by the date specified it will become final and binding at the end of that day.

[4] On 23 June 2013, Mr Wood issued his recommendation to the parties. Neither party objected to the recommendation and on 27 June 2013, Mr Wood confirmed that the recommendation had become the binding agreement for resolution of the matter.

Issues

[5] The issue brought to the Authority by Mr Power relates to a failure by Electric Guys to comply with the terms of the recommendation.

[6] On 22 November 2013, an application for a compliance order was filed in the Authority by Mr Power claiming that, despite requests, Electric Guys had failed to pay Mr Power the sum of \$2,880 under s.123(1)(c)(i) of the Act, had failed to make a contribution of \$1,000 plus GST towards Mr Power's legal fees and had failed to provide a certificate of service as required by the terms of the recommendation.

[7] On 9 December 2013, Electric Guys Limited filed a statement in reply in the Authority stating the following:

We accepted the mediator recommendation given, but we simply cannot pay as our company has ceased trading and has no available funds.

The Statement in Reply attached a certificate of service as required by the recommendation.

[8] Following a telephone conference between the parties and the Authority with regard to this matter, the respondent agreed to provide further information in relation to its financial performance. A document entitled "*Electric Guys Limited, Statement of Financial Performance- Continued for the period ended 1 April 2013*" was filed in the Authority.

[9] The document does not provide details as to who prepared the information, there are no supporting documents and the financial information is not current. I am satisfied that Electric Guys Limited has not complied with the terms of the settlement.

Determination

[10] The financial information provided to the Authority is inadequate and it appears that the company's financial position was known to the directors prior to agreeing to the recommendation.

[11] I therefore make an order that Electric Guys Limited is to pay Mr Power within seven days of the date of this determination the sum of \$2,880 in accordance with the recommendation. This sum is to be paid by Electric Guys Limited directly into Mr Power's bank account, details of which have been provided to it.

[12] Further, Electric Guys Limited is within seven days of the date of this determination to pay the sum of \$1,000 plus GST directly to Kensington Swan Lawyers being a contribution to Mr Power's legal costs as set out in the recommendation.

[13] For the information of Electric Guys Limited, 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 Mr Power to the Employment Court. Where the Court is satisfied that any person has failed to comply with a compliance order under s.137 of the Act, 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

[14] I order Electric Guys Limited to reimburse Mr Power the Authority's \$71.56 filing fee within seven days of the date of this determination.

[15] I also direct that pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000, Mr Power be provided with a certificate of determination, sealed with the seal of the Authority, recording respectively that Electric Guys Limited is ordered to pay within seven days of the date of this determination:

- (i) To Mr Power the sum of \$2,880 pursuant to s.123(1)(c)(i) of the Act;
- (ii) To Mr Power's legal advisers, Kensington Swan Lawyers, the sum of \$1,000 plus GST being a contribution to his legal costs;
- (iii) To reimburse to Mr Power the filing fee of \$71.56.

Anna Fitzgibbon
Member of the Employment Relations Authority