

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 489  
5516082

BETWEEN

YUJING QIU  
Applicant

A N D

NZND MEDIA LIMITED  
Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person  
Respondent in person

Investigation Meeting: On the papers

Submissions Received: No submissions from the Applicant  
No submissions from the Respondent

Date of Determination: 2 December 2014

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**DETERMINATION OF THE AUTHORITY**

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**A. The application for compliance order and penalties is dismissed.**

**B. There is no order as to costs.**

**Employment relationship problem**

[1] The applicant, Yujing Qiu, applies for a compliance order pursuant to s.137 of the Employment Relations Act 2000 (the Act) against the respondent, NZND Media Limited, seeking to enforce a settlement agreement dated 8 August 2014 (the settlement agreement).

**Facts leading to dismissal**

[2] On 8 August 2014 the parties entered into a settlement agreement. The settlement agreement provided:

- (a) The respondent shall pay the applicant salary owing of \$10,952.76 net. This amount will be paid to the applicant by way of direct credit into [her bank account] as follows:
  - (i) \$5,476.38 by 22 August 2014;
  - (ii) \$5,476.38 by 5 September 2014.
- (b) Should one debt payment be missed on the due date, the total debt still owing will become a debt due and payable immediately.

[3] On 27 August 2014 the applicant filed a statement of problem alleging the respondent had breached the settlement agreement by failing to pay \$5,476.38 on 22 August 2014. She sought payment of \$10,952.76 immediately, reimbursement of her filing fee of \$71.56, interest and a penalty.

[4] On 22 September 2014 the respondent filed a statement in reply alleging they had paid the applicant \$5,000 on 15 September 2014 and \$5,952.76 on 21 September 2014.

[5] On 11 November 2014 a Minute was issued seeking confirmation from the applicant about:

- (a) Whether she received payments of \$5,000 on 15 September 2014 and \$5,952.76 on 21 September 2014; and
- (b) Whether she wished to proceed with the application.

[6] On 12 November 2014 the applicant confirmed she had received both payments of \$5,000 on 15 September 2014 and \$5,952.76 on 21 September 2014. She still sought reimbursement of the filing fee of \$71.56, interest and a penalty against the respondent.

[7] On 12 November 2014 I directed the parties to file anything further about this matter by 21 November 2014 at 3pm. The matter would then be dealt with on the papers.

[8] Neither party has filed any further information. The matter is now before me for determination.

## Determination

[9] The Authority has the jurisdiction to make compliance orders under s.137. Section 137(1)(a)(iii) provides that the Authority may make a compliance order if any person “*has not observed or complied with ... any terms of settlement ...*”

[10] To justify the making of compliance orders it is not enough that there has been non-compliance or non-observance of a settlement agreement. The Authority has a discretion to make a compliance order or to refuse it make it or to postpone making it.<sup>1</sup>

[11] The Authority ought not to grant compliance orders where there would be no practical benefit in doing so.<sup>2</sup>

[12] The Courts have declined to issue compliance orders where the outcome sought by the applicant for compliance has been agreed or occurred. Even where there is an established breach, the Courts have been reluctant to exercise their discretion to make a compliance order. The Courts are even more reluctant to award penalties unless there has been non-compliance of the compliance order itself.<sup>3</sup>

[13] Section 138(5) of the Act provides even where the Authority makes a compliance order it may adjourn the matter without imposing any penalty or making a final determination to enable the compliance order to be complied with. This infers compliance is to be encouraged without the necessity of Authority intervention.

[14] Here the respondent has now complied with the terms of the Settlement Agreement. The applicant has received payment in full. There is no practical benefit in issuing a compliance order against the respondent given it has now complied. Given no compliance order is now required, there can be, conversely, no penalty awarded.

[15] This was an appropriate case for further mediation prior to the application for compliance order being made. It could have prevented the incurrence of further time and cost in the form of filing fees. It is unfortunate recourse to the Ministry’s resources was not sought in the first instance.

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<sup>1</sup> *United Food Chemical Workers Union of New Zealand v. Talley* [1992] 1 ERNZ 756 (LC)

<sup>2</sup> *New Zealand Electrical, Electronics IUOW v. Remtron Lighting Ltd (in rec)* [1990] 1 NZILR 583 (LC)

<sup>3</sup> *Counties Manukau Health Ltd trading as South Auckland Health v. Pack* [2000] 1 ERNZ 518 at [31]

[16] In the circumstances, I decline to make a compliance order. There is no practical benefit in doing so given the respondent has now complied. The application for compliance order and penalties is dismissed.

[17] As the parties were self-represented, there is no order as to costs.

**T G Tetitaha**  
**Member of the Employment Relations Authority**