

**NOTE: This determination is subject to an order prohibiting publication of some information – see paragraph [2]**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2024] NZERA 260  
3282439

BETWEEN	RDJ Applicant
AND	SGF Respondent

Member of Authority:	Robin Arthur
Representatives:	Jessica Heinstman, counsel for the Applicant ZEL, director of the Respondent
Investigation:	On the papers
Determination:	3 May 2024

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**DETERMINATION OF THE AUTHORITY**

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[1] This determination concerns an application for compliance orders with two earlier Authority determinations that required the respondent company SGF to pay its former employee RDJ \$2,230.80 as wages arrears, \$7,000 as compensation and \$5,441.55 for costs and expenses.<sup>1</sup>

**Order prohibiting publication of names and some financial information**

[2] An order prohibiting publication of the names of the applicant, the respondent company and its director, made in the first of those determinations, remains in effect.<sup>2</sup> Using randomly selected initials the applicant is referred to as RDJ, the respondent as SGF and its director, ZEL.

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<sup>1</sup> *RDJ v SGF* [2023] NZERA 462 and *RDJ v SGF* [2023] NZERA 541.

<sup>2</sup> Employment Relations Act 2000, Sch 2 cl 10.

[3] Under directions of the Authority issued on 2 April 2024, an order is also in place prohibiting publication of financial information provided by SGF in support of its request for payment of amounts due to RDJ to be paid by instalments.

#### **Application for compliance order**

[4] On 5 March 2024 RDJ applied to the Authority for a compliance order because SGF had not paid any of the amounts ordered in the Authority's earlier determinations, one issued on 21 August 2023 and the second on 20 September 2023. The determinations had ordered payment of those amounts within 28 days of those dates.

[5] SGF's statement in reply to this application, lodged on 26 March 2024, said the company's business and a related trust did not have the money to pay the amounts ordered. It said RDJ had been "gifted \$51,000" by the trust and received other money from ZEL. It described the Authority's determination of RDJ's personal grievance as "focuss[ing] on two bad things that happened during his employment and those two things somehow negate all the positive things [RDJ] gained along the way.

[6] SGF proposed paying the amounts ordered in instalments of \$400 a month. At that rate, it would take three years to pay the full amount ordered, which totals \$14,672.35.

[7] By directions issued on 2 April 2024 the parties were advised this matter could appropriately be determined on the papers. Dates were set for SGF to lodge further financial information in support of its request to be permitted to pay the sums due in instalments and for RDJ to comment on that information once provided.

[8] By email on 15 April ZEF provided a description of the operation of the business, describing it as "currently only just scraping through", and copies of bank statements for its account for the last three months, along with a recent credit card statement. The statements show the account is in overdraft, with just over \$9,000 due on its credit card.

[9] By memorandum dated 29 April 2024 RDJ said references ZEL made to a trust were irrelevant to SGF's obligations to him and disagreed the company's financial position required instalments. He also criticised SGF's proposed instalment plan of \$400 a month for the long period it would take to complete.

[10] By email on 29 April ZEL noted that RDJ's memorandum incorrectly referred to the credit card balance as if that amount was money held rather than money owed.

### **Assessment**

[11] The Employment Relations Act 2000 (the Act) allows a compliance order to permit an employer to make payments of money owed by instalments:<sup>3</sup>

If the compliance order relates in whole or in part to the payment to an employee of a sum of money, the Authority may order payment to the employee by instalments, but **only** if the financial position of the employer **requires** it.

[12] The discretion given to the Authority to make such an order, as highlighted in bold in the subsection above, is limited to circumstances where the employer's financial position "requires" payment by instalments. It is a high standard. Evidence must establish a need for such an order. It cannot be made simply because the employer would prefer to pay by instalments or it would be more convenient, amongst the employer's other financial commitments, to delay paying the full amount due to the employee. The evidence should also show the employer cannot fund prompt payment of the ordered amounts from other revenue or raising a loan from a financial institution or other sources.

[13] The information SGF provided did not meet this standard. Its request for an instalment plan is declined for the following two reasons.

[14] Firstly, the information did not establish SGF was not able to extend its overdraft arrangements with its bank or to raise a loan to pay the ordered amounts and then pay that overdraft or loan off on the same instalment basis that it proposed RGJ should bear. ZEL's email of 15 April outlined upcoming changes to SGF's marketing arrangements, and associated costs, which she expected would allow the business to afford payments of \$400 a month.

[15] Secondly, there was reason to doubt SGJ would comply with an instalment plan. In the period of more than six months since the amounts were due under the orders made in the determinations, SGJ had not made any payment. It has not filed any challenge to the determinations but, as clear from its statement in reply to this

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<sup>3</sup> Employment Relations Act 2000, s 138(4A).

application, disagreed with the outcome. It is likely that the failure to pay so far was a result of that view and that an instalment plan would face similar difficulties of delay.

### **Compliance order**

[16] By order made under s 137 of the Act SGF must comply with the orders of the Authority to pay RDJ the sum of \$14,672.35 (comprising wages arrears of \$2,230.80, compensation of \$7,000 and costs and expenses totalling \$5,441.55). SGF must pay this sum to RDJ by no later than 28 days from the date of this determination.

### **Costs**

[17] SGF must also pay RDJ a further sum of \$500 as a contribution to his costs in seeking this compliance order. This sum must also be paid by no later than 28 days from the date of this determination.

### **Next steps**

[18] If SGF fails to comply with the compliance order made, RDF may seek further orders from the Employment Court exercising its powers to order a fine of up to \$40,000, sequestration of SGF property or a term of imprisonment.<sup>4</sup>

[19] Under s 141(1) of the Act RDF may, alternatively, file this order in the District Court and seek enforcement through the District Court processes. If following that option, RDF may ask the Authority for a certificate of determination identifying the actual party names to use in filing the matter in the District Court.

Robin Arthur  
Member of the Employment Relations Authority

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<sup>4</sup> Employment Relations Act 2000, s 138(6) and s 140(6).