

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 390/10
5312842

BETWEEN KERIANA REEDY
 Applicant

AND NETWORK MURUPARA
 INCORPORATED
 Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
 James Goldsmith and Rita Teddy for Respondent

Investigation Meeting: By telephone conference on 26 August 2010

Determination: 27 August 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] By statement of problem lodged in the Authority on 20 July 2010 Keriana Reedy sought orders requiring Network Murupara Incorporated (NMI) to comply with the terms of a record of settlement signed by the parties and certified by a mediator under s149 of the Employment Relations Act 2000 (the Act) on 17 June 2010. The settlement was signed on NMI's behalf by its board chairperson, James Goldsmith.

[2] The settlement agreement included terms on which Ms Reedy resigned from her job as a manager for NMI.

[3] Ms Reedy says some payments due to her in instalments under that agreement have not been made. She also says her final pay and holiday pay were not paid to her after her last day of work on 18 June 2010.

[4] The statement of problem was sent to NMI at the address of its registered

office. No statement in reply was received within the 14 day statutory period.

[5] Ms Reedy then applied for her application for a compliance order to be considered on an urgent basis because the lack of agreed payments was causing her hardship.

[6] No reply was received to an email and a fax from the Authority to NMI about the application and request for urgency. An inquiry was made to a firm of barristers and solicitors which had previously acted for NMI on other matters in the Authority but a representative of that firm advised it had no instructions and could not accept service or otherwise assist.

Urgency granted

[7] In the absence of a reply or any information from NMI, I granted Ms Reedy's application for urgency and abridged the time for notification of an investigation meeting: clause 17 of Schedule 2 of the Act applied.

Investigation meeting by telephone conference

[8] The notice of investigation meeting, to be held by telephone conference on 26 August 2010, was posted to a number of addresses located for NMI: its registered office, its post box, and Mr Goldsmith's home address. It was also sent to a fax number and email address for NMI. The notice was accompanied by a minute noting that the Authority could proceed with enforceable orders if NMI did not attend or was not represented at the meeting: clause 12 of Schedule 2 of the Act applied.

[9] After issuing the notice further and repeated efforts by an Authority support officer resulted in contact being made with Mr Goldsmith and its board vice-chairperson Rita Teddy.

[10] Both NMI representatives and Ms Reedy attended the investigation meeting by telephone conference. Each person took an affirmation, answered questions from the Authority and had the opportunity to comment on the evidence given.

The situation

[11] As of 26 August 2010 NMI had made only two of the eleven weekly instalments which were to be paid between 25 June and 3 September.

[12] Mr Goldsmith said that from July NMI's contracts had been stopped and with no money coming in, all staff had been laid off. The Ministry of Social Development (MSD) initially provided funds to set up NMI and had now arranged for a manager to prepare a report on whether NMI could continue operating.

[13] Both Mr Goldsmith and Ms Teddy understood there was no longer any money in any of NMI's accounts to pay the money owed to Ms Reedy. NMI has a number of other creditors apart from Ms Reedy, the largest being Inland Revenue.

[14] Ms Reedy understood NMI's housing account – into which clients made payments for services to them – did have funds which could have been used to pay her but Ms Teddy disputed whether any such funds were sufficient or could have been diverted for that purpose.

[15] NMI does have some assets. Mr Goldsmith advised that NMI was told it could not sell equipment provided to it by MSD but there were some vehicles and other assets that could be sold "*if worst came to worst*". NMI's board was also hopeful that it could continue to trade and generate funds to meet outstanding obligations.

Determination

[16] As discussed with Ms Reedy, Mr Goldsmith and Ms Teddy during the investigation meeting, settlement agreements made and certified under s149 of the Act are declared by Parliament to be final, binding and enforceable. The Act provides for those agreements to be enforced by compliance order in the Authority, and if necessary, by further orders through the District Court or the Employment Court. If a compliance order of the Authority is not followed, the applicant may seek court orders for assets to be seized (ss 138(6), 140(6), and 141 of the Act).

[17] In the circumstances I am satisfied Ms Reedy is entitled to an order under s137 of the Act requiring NMI to comply with the terms of settlement. I so order. While NMI bank accounts may not presently hold sufficient funds, NMI has assets which could be sold or could seek a loan to honour its obligation to Ms Reedy. It is a matter to which NMI's board can and must give attention.

[18] Under s137(3) of the Act the Authority must specify a time within which the order is to be obeyed. I set that period as 21 days from the date of this determination – that is by no later than 17 September 2010.

[19] This order relates specifically to the outstanding payments due to Ms Reedy under clause two of the settlement agreement – which by 3 September 2010 will be nine of the instalments promised but not paid.

[20] If NMI does not meet the terms of the compliance order by the due date, Ms Reedy may have recourse to enforcement action in either the District or Employment Courts.

[21] I have not made an order in relation to Ms Reedy's claim regarding \$840 which she says remains due to her as final pay from when she ended work on 18 June. That amount was not referred to in the settlement agreement but if it remains due to her, it is a debt to be ranked among other creditors of NMI and attended to in due course.

Robin Arthur
Member of the Employment Relations Authority