

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 415  
5626781

BETWEEN THEO RODINK  
Applicant  
AND AE AND AM INGER  
Respondent

Member of Authority: Vicki Campbell  
Representatives: Chris Rowe for Applicant  
Alwyn Inger for Respondent  
Investigation Meeting: On the Papers  
Determination: 20 December 2016

---

**DETERMINATION OF THE  
EMPLOYMENT RELATIONS AUTHORITY**

---

- A. AE & AM Inger are ordered to comply with the Record of Settlement and issue a Certificate of Service recording the correct dates of employment within seven (7) days of the date of this determination.**
- B. AE & AM Inger are ordered pay to Mr Rodink the sum of \$571.56 being his costs on this application within seven (7) days of the date of this determination.**

**Employment relationship problem**

[1] Mr Theo Rodink claims AE & AM Inger (the Inger's) failed to comply with a Record of Settlement (ROS) dated 21 March 2016. Mr Rodink seeks a compliance order, the imposition of a penalty against the Inger's and a contribution to the costs associated with making this application.

[2] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded all the evidence and submissions received from Mr Rodink and the Inger's but has stated findings of fact, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

### **Background**

[3] Mr Rodink and the Inger's attended mediation on 21 March 2016 and entered into a final, binding and enforceable ROS which was signed by a Mediator employed by the Ministry of Business, Innovation and Employment on 21 March 2016.

[4] The relevant terms of the ROS required the Inger's to pay to Mr Rodink three payments of \$1,000 on or before the 20<sup>th</sup> day of each of the months April, May and June 2016 and provide Mr Rodink with a Certificate of Service.

[5] Mr Rodink lodged his application in the Authority on 20 May 2016 after the Inger's had failed to meet the first of the payments required under the ROS on its due date. In their statement in reply lodged on 2 June 2016 the Inger's advised the Authority that all payments due at that time, under the ROS had been paid.

[6] This matter was not referred to me until 24 November 2016 at which time I set up a case management call to discuss whether and how the matter should proceed. The matter had been delayed in the Authority due changes in staffing in the Authority.

[7] During a case management call on 28 November 2016 the parties consented to the matter being dealt with on the papers and a timetable was agreed for further information regarding the payments made to Mr Rodink and costs incurred by him to be lodged in the Authority.

### **Issues**

[8] The issues for determination are whether compliance should be ordered, what if any penalties should be imposed and/or whether costs should be awarded.

## **Compliance orders**

[9] The Authority has the power to order compliance with any provision of any agreed terms of settlement that are enforceable by the parties under section 149(3) of the Act.<sup>1</sup> The wording of the Act contemplates that compliance can only be ordered after the non-observance of the agreed terms.<sup>2</sup>

[10] The application was dated 17 May 2016 and lodged in the Authority on 20 May 2016. At the time of lodgement the 20 April 2016 payment had been paid, albeit late. The payment due on 20 May had not been paid but was due that day. The payment due on 20 June 2016 was not due or payable and there was no breach in respect of that amount at that time.

## ***Payments under the ROS***

[11] According to the bank records lodged in the Authority payments under the ROS were made on 9 and 23 May and 20 June 2016.

[12] Compliance is a discretionary remedy. Any intervention by the Authority should be no more than is necessary to ensure compliance in the future.<sup>3</sup> I am satisfied the Inger's have met their obligations to pay the agreed sum under the ROS and there is no continuing breach. In these circumstances a compliance order is unnecessary.

## ***Certificate of Service***

[13] A certificate of service has been provided which contains incorrect information regarding the dates of Mr Rodink's employment. Mr Rodink says the correct employment dates should be 3 January to 21 March 2016.

---

<sup>1</sup> Employment Relations Act 2000 sections 137(1)(a)(iii) and 151(1)(a).

<sup>2</sup> Above n 1 at section 137(1).

<sup>3</sup> *NZ Seamens Union v Gearbulk Shipping (NZ) Ltd* [1989] 2 NZILR 270.

[14] AE & AM Inger are ordered to comply with the Record of Settlement and issue a Certificate of Service recording the correct dates of employment within seven (7) days of the date of this determination.

### **Penalties**

[15] Mr Rodink seeks the imposition of penalties. This is not a case in which penalties are appropriate and Mr Rodink's application for the imposition of penalties is declined.

### **Costs**

[16] The first payment under the ROS was late and was paid only after Mr Rodink lodged an application for compliance in the Authority. This would not have been necessary had the Inger's complied with the ROS.

[17] Mr Rodink has provided evidence that he has expended \$500.00 in costs plus disbursements of \$71.56 for the filing fee on his application. It is appropriate that Mr Rodink be reimbursed for the costs associated with his application.

[18] AE & AM Inger are ordered pay to Mr Rodink the sum of \$571.56 being his costs on this application within seven (7) days of the date of this determination.

Vicki Campbell  
Member of the Employment Relations Authority