

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 319/10
5288821

BETWEEN RAEWYN SIVEWRIGHT
 Applicant

AND LYNNETTE VAN DER KOLK
 Respondent

Member of Authority: Yvonne Oldfield

Representatives: Ms Sivewright in person
 Ms van der Kolk in person.

Investigation Meeting: 6 July 2010

Determination: 12 July 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This matter concerns an application for enforcement of mediated terms of settlement signed by the parties and by a mediator on 15 October 2009. Ms Sivewright says that the following terms have been breached:

“2. Lynette van der Kolk shall pay Raewyn Sivewright without admission of liability the compensatory sum of \$2,000.00 in terms of section 123 (1) (c) (i) of the Employment Relations Act 2000. This amount will be paid at \$100 per week starting on Friday 23 October 2009 and continuing to be paid every week on Friday until the debt is paid in full. These amounts shall be paid to the Applicant by way of direct credit...”

and

“5. Lynette van der Kolk shall return Raewyn [sic] CV to her within 7 days of the date hereof.”

[2] Mrs van der Kolk denies breaching these terms of settlement.

[3] There were also two further issues between the parties which have been resolved. The first related to a request by Ms Sivewright that she be provided with a statement of income for tax and income support purposes. Ms van der Kolk supplied this to her in my presence and I record that that matter is disposed of.

[4] The other is that Ms Sivewright would like copies of her wage and time records. Ms van der Kolk advised the Authority that she has kept this information in a hard copy wage book. She also advised that she would arrange for photocopies of the relevant pages to be couriered to Ms Sivewright.

[5] **On that basis, I make an order by consent that Ms van der Kolk is to provide Ms Sivewright with photocopies of her wage and time records.**

[6] For the avoidance of doubt I also note that the terms of this order will be satisfied when the copies in question have been couriered to Ms Sivewright at the address for service provided to the Authority.

[7] The issues for determination here are therefore whether there have been breaches of clauses (2) and (5) of the terms of settlement. Ms Sivewright has also made a claim for costs (being reimbursement of her filing fee) in the event it is found that there has been a breach.

Alleged breaches of mediated terms of settlement

[8] There is no dispute that the compensatory sum has now been paid in full. Ms Sivewright's monthly bank statements record regular \$100.00 deposits on the relevant Fridays during the period in question. However her evidence was that she was not able to draw on this money until each Saturday. She says therefore that the respondent is in breach of her obligation to pay the instalments "*on Friday.*" Ms Sivewright does not seek a penalty in relation to the alleged breach. Rather she requests a declaration to the effect that the terms have been breached and that she was entitled to the full use of each instalment on the Friday.

[9] Ms van der Kolk's position is that she complied with the terms of settlement. She said that she asked her bank to set up a direct credit to Ms Sivewright's account of \$100.00 every Friday. She said that her bank statements show the relevant withdrawal occurring every Friday.

[10] As for the alleged breach of clause (5), Ms van der Kolk says she posted the CV to Ms Sivewright, in the timeframe specified, in the same envelope as copies of letters which were also required under the terms of settlement. Shortly afterwards, she was advised that Ms Sivewright had not received anything. Having a copy of the letters, she simply resent them. However she had not retained a copy of the CV and so was unable to send another one out.

[11] Ms Sivewright told me that on occasions some of her mail had gone to a neighbour. However she said she checked with her neighbours and with the post office and does not believe that this could have happened on this occasion. She told me that she believed that Ms van der Kolk deliberately withheld her CV, although she did not explain why she thought this to be the case. Ms Sivewright advised that she sought an order for compliance with clause (5) of the terms of settlement.

Determination

[12] In relation to the alleged breach of clause (2), I conclude that since Ms Sivewright's bank statements record that the instalments were deposited on the Fridays, as required by the terms of settlement, Ms van der Kolk has met her obligations pursuant to the terms of settlement. The fact that the money was not made available for Ms Sivewright to draw on until the Saturday is a matter for her to take up with her bank.

[13] As for the alleged breach of clause (5), no evidence was provided in support of the assertion that Ms van der Kolk had withheld Ms Sivewright's CV from her. I therefore accept Ms van der Kolk's evidence that she posted the CV as required by the terms of settlement.

[14] In summary it has not been made out that there was any breach of the terms of settlement.

Costs

[15] Costs normally follow the event which in this case is that the applicant has failed to make out her allegations of breach of the mediated terms of settlement. However Ms van der Kolk was not represented and has made no claim for costs. I therefore make no order for costs.

Yvonne Oldfield

Member of the Employment Relations Authority