

NOTE: An order for the payment of a penalty appears at p 3 of this determination

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 23/09
5086282

BETWEEN SKILLS4WORK
INCORPORATED
Applicant

AND NEIL EVANS
Respondent

Member of Authority: R A Monaghan

Representatives: K Coombs, advocate for Applicant
No appearance for Respondent

Investigation Meeting: 28 January 2009

Determination: 28 January 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Skills4work Incorporated (“Skills4work”) is a party to a settlement of an employment relationship problem with Neil Evans. A mediator has recorded the terms as a settlement under s 149 of the Employment Relations Act 2000.

[2] Although the settlement contained a provision regarding confidentiality, it is necessary for the purposes of this determination to refer in detail to one of the other provisions. The terms of settlement provided at clause 3 that Mr Evans would:

“pay to Skills 4 Work Incorporated a net sum of \$2,000. This payment will be paid as follows – a minimum of \$500 paid on or before 20 October 2007, another minimum payment of \$500 paid on or before 20 November 2007, the balance to be paid on or before 20 December 2007.”

[3] Skills4work says Mr Evans has not made any of the payments. It seeks an order that he comply with the terms of settlement by making payment of the agreed amount in full, and a penalty for his breach of the terms of settlement.

Failure of respondent to respond or appear

[4] Mr Evans did not file a statement in reply, did not respond to the Authority's attempts to contact him, and did not appear at the investigation meeting. I am satisfied that he has received the statement of problem and notice of meeting.

[5] Since Mr Evans has given no cause for his failure to attend or be represented, I proceed under Schedule 2, clause 12 of the Act as if Mr Evans had attended or been represented.

Order for compliance

[6] Skills4work produced file notes and email messages showing it had attempted to contact Mr Evans regarding payment several times between November 2007 and April 2008. It says, and I accept, that it received no response and no payment.

[7] Sections 151 and 137 of the Act empower the Authority to order compliance with terms of settlement reached under s 149, including provisions for the payment of a sum of money.

[8] Since Mr Evans failed to meet the scheduled payments by instalment, the entire settlement sum is now outstanding. He is therefore ordered to comply with clause 3 of the settlement agreement by paying to Skills4work the sum of \$2,000 (net).

[9] Payment is to be made within 14 days of the date of this determination.

Penalty

[10] Section 149(4) of the Act provides that a person who breaches an agreed term of settlement to which s 149(3) applies is liable to a penalty imposed by the Authority.

[11] Mr Evans has breached clause 3 of the settlement and provided no explanation. His apparent failure to make any effort to observe the terms of the clause, coupled with the lack of any response to Skills4work or to the Authority, are serious matters warranting the imposition of more than a modest penalty.

[12] Mr Evans is therefore ordered to pay a penalty of \$1,000, which is payable into the Authority.

Costs

[13] Mr Evans is further ordered to pay to Skills4work the sum of \$70 in respect of the Authority's filing fee.

R A Monaghan

Member of the Employment Relations Authority