

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 61
3285819

BETWEEN ANGELICA SOSA
Applicant

AND KRESHNIK FEJZULLAHU
Respondent

Member of Authority: Lucia Vincent

Representatives: Trent Bowler for the Applicant

Investigation Meeting: On the papers

Submissions and Up to 15 November 2024 from the Applicant
Information Received: Up to 25 October 2024 from the Respondent

Determination: 10 February 2025

DETERMINATION OF THE AUTHORITY

What is the Employment Relationship Problem?

[1] In a determination dated 13 July 2022 the Authority upheld Ms Sosa’s claims and ordered Mr Fejzullahu to make payments of arrears of wages of \$9,260.20 and half of a penalty of \$6,000.00, and that these payments be made within 28 days of the determination, together with interest calculated from the date of the determination until paid in full using the civil debt calculator on the Ministry of Justice website.¹

[2] In a determination released on 9 November 2022 the Authority also awarded costs of \$4,500.00 plus a filing fee of \$71.56 to be paid within 14 days of the determination.²

[3] Mr Fejzullahu does not dispute that he has not paid the amounts the Authority ordered he pay Ms Sosa in the determinations. He says he is unable to make the

¹ *Sosa v Amici Group Limited (in Liquidation) and Fejzullahu* [2022] NZERA 321 at [47] to [50]. The calculator can be found at [Civil debt interest calculator | New Zealand Ministry of Justice](#)

² *Sosa v Fejzullahu* [2022] NZERA 583 at [9].

payments because of various financial commitments. He is willing to pay \$10.00 a week.

[4] Ms Sosa seeks a compliance order against Mr Fejzullahu to comply with the determinations by making the payments ordered in them.

How did the Authority investigate?

[5] The Authority held a case management conference on 14 June 2024 after receiving the statement of problem on 15 March 2024. The Authority timetabled evidence and submissions through July and August 2024.

[6] Neither party complied with timetabling directions. The Authority received information up to and including 15 November 2024.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

What are the issues?

[8] The Authority investigated the following issues:

- (a) Has Mr Fejzullahu complied with the orders made by the Authority in the determinations?
- (b) Should the Authority order compliance under s 137 of the Act?

Has Mr Fejzullahu complied with the orders made by the Authority in the determinations?

[9] Mr Fejzullahu confirmed he has not made any payments because of his financial circumstances. He appeared to be dissatisfied with the substantive determination but did not to challenge either determination. Dissatisfaction with a determination does not excuse a failure to comply with the Authority's orders.

[10] Mr Fejzullahu has not complied with the orders made in the determinations.

Should the Authority order compliance?

[11] The Authority has exclusive jurisdiction to make determinations about employment relationship problems generally, including compliance orders under s 137 of the Act.³ Where a person has failed to comply with an order made in a determination, the Authority may make a further order (a compliance order) requiring that person to comply with the orders within a specific timeframe to prevent further non-compliance.

[12] The Authority should exercise its discretion to make or refuse a compliance order in a principled way.

[13] Where a compliance order requires a person to pay money, the Authority may order payment to the employee by instalments, but only if the financial position of the employer requires it.⁴

[14] The determinations of the Authority in this case relate to orders made in Mr Fejzullahu's role as a person involved in a breach for the purposes of s 142W and s 142Y of the Act. The company that employed Ms Sosa was in liquidation and defaulted in payment. Orders were made with the leave of the Authority to recover those payments from Mr Fejzullahu directly.

[15] Although a purposive interpretation of s 138(4A) potentially enables the Authority to make an order taking into account Mr Fejzullahu's financial circumstances to order instalments, I am not satisfied Mr Fejzullahu has provided sufficient evidence of his financial situation to warrant such an order.

[16] Mr Fejzullahu's evidence referred to his limited income of \$600.00 a week to cover his basic needs and provide for his children. He said he was still financially recovering from losing his businesses and income, dealing with IRD debts and suffering from immense financial and mental strain for the last number of years. He says he is willing to pay \$10.00 a week as that is all his financial situation affords. Mr Fejzullahu provided an income and expenses summary that shows he is committed to various key expenses such as rent, food and household expenses. He has a forecast balance remaining fortnightly of \$30.00 a week. He attached three payslips which indicated an income that had a take-home pay of approximately \$1,200.00 per week.

³ Act, section 161(1)(n).

⁴ Act, section 138(4A).

[17] Mr Fejzullahu has not provided evidence of his overall financial situation as would be expected. For example, there is no information about Mr Fejzullahu's assets and liabilities and his ability to lend or obtain credit to satisfy the orders of the Authority. Without this complete picture it is difficult to accurately assess his overall financial situation and ability to meet the orders made.

[18] I am satisfied an order for compliance should be made. I order Mr Fejzullahu comply with the orders in determinations [2022] NZERA 321 and [2022] NZERA 583 and make the following payments within 28 days of this determination to Ms Sosa:

- (a) Wage arrears of \$9,260.20;
- (b) Half of the penalty of \$6,000.00 i.e \$3,000;
- (c) Costs of \$4,500.00;
- (d) Filing fee of \$71.56; and
- (e) Interest on the amount in paragraph [18](a) calculated from the date of determination [2022] NZERA 321 (13 July 2022) to the date of payment.

[19] Failing to comply with a compliance order can result in serious consequences. I record the ability of the Authority to extend the time specified to obey the compliance order on the application of the person required to obey the order in s 138(3) of the Act. If Mr Fejzullahu wishes to apply for an extension within the time for compliance of 28 days, he must provide clear documentary information about his financial position that warrants further consideration.

Summary of Orders

[20] I order Mr Fejzullahu comply with the orders in determinations [2022] NZERA 321 and [2022] NZERA 583 and make the following payments within 28 days of this determination to Ms Sosa:

- (a) Wage arrears of \$9,260.20;
- (b) Half of the penalty of \$6,000.00 i.e \$3,000;
- (c) Costs of \$4,500.00;
- (d) Filing fee of \$71.56; and
- (e) Interest on the amount in paragraph [20](a) calculated from the date of determination [2022] NZERA 321 (13 July 2022) to the date of payment.

Costs

[21] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[22] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Sosa may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Mr Fejzullahu will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[23] Mr Bowler indicated he would be seeking indemnity costs. The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.⁵

Lucia Vincent
Member of the Employment Relations Authority

⁵ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1