

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA
TAIMAHI ŌTAUTAHI ROHE**

[2023] NZERA 423
3222559

BETWEEN

TRACY TAHUHU
Applicant

AND

ALPINE 182 DEGREES
LIMITED
Respondent

Member of Authority: Antoinette Baker

Representatives: Maryline Suchley, advocate for the Applicant
 No appearance for the respondent

Investigation Meeting: 8 August 2023 at Christchurch

Submissions received: On the day from Applicant only

Determination: 8 August 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 25 November 2022 the Authority determined that the applicant (Ms Tahuhu) had been unjustifiably dismissed and disadvantaged in her employment¹. The Authority ordered her former employer, the respondent, (Alpine) to pay her a total of \$26,422.67 together with interest on arrears of \$2,734.86 (the orders) being made up as follows:

- (a) \$18,000.00 in compensation for humiliation, loss of dignity and injury to feelings for unjustified disadvantage and unjustified dismissal;
- (b) \$316.25 being an unlawful deduction from Ms Tahuhu's final pay;

¹ *Tahuhu v Alpine 182 Degrees Limited trading as The Springfield Hotel 2022 NZERA 620*, Member Fuiava.

- (c) \$2,734.86 in wage arrears and holiday pay;
- (d) interest on the sum of \$2,734.86 from 25 January 2022 to the date of payment using the Ministry of Justice civil debt calculator²;
- (e) lost wages of \$1,800.00;
- (f) costs of \$3,500.00; and
- (g) the filing fee of \$71.56.

[2] Alpine has not complied with the orders.

[3] Ms Tahuhu seeks a compliance order under section 137(1)(b) of the Act against Alpine together with interest on the default payment, reimbursement of the \$71.55 filing fee for this application and costs.

The Authority's investigation

[4] For the Authority's investigation a statement of problem (later amended) and a statement in reply from Mr Wallace (not later amended) were received together with a brief of evidence from Ms Tahuhu. Mr Wallace joined the phone conference call and I then directed³ time for him to file an amended statement in reply and to include the evidence he said he had about the reasons for non-payment by Alpine due to a lack of 'surplus' funds. Since then, Mr Wallace for Alpine has provided no further information to the investigation.

[5] I held a brief in-person investigation meeting as scheduled in my directions⁴ and heard from Ms Tahuhu and from her representative. Mr Wallace or anyone from or for Alpine appeared. I am satisfied Alpine was aware of the meeting.

[6] The Authority has the power to proceed if any party fails to attend an investigation meeting 'without good cause'⁵. I considered the above circumstances and found I had no good

² Using as ordered the Ministry of Justice civil debt calculator: www.justice.govt.nz/fines/civil-debt-interest-calculator.

³ Directions of the Authority dated 9 June 2023.

⁴ As above.

⁵ Employment Relations Act 2000, Schedule 2, Clause 12.

cause before me not to proceed. Accordingly, I continued with the investigation meeting and now make this determination.

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

Should the Authority order compliance against Alpine?

[8] The Authority has the power to order compliance with any determination made by the Authority where any person has not complied with that determination.⁶

[9] I am satisfied that Alpine has paid none of the Determination set out above at [1]. While Alpine provided a statement in reply it was almost entirely a relitigation of the substantive matter that its director, Mr Blair Wallace, does not agree with. None of this material is relevant to my consideration of a compliance order. Alpine has had the same opportunity as does every party to Authority proceedings to consider the options it has to challenge a determination. It has not done so. I explained all of this to Mr Wallace on the phone conference call that he attended and urged him to seek assistance.

[10] While Mr Wallace, the sole director of Alpine, explained on the phone conference call that he had further information about the financial situation of A, the statement in reply includes that the company continues to trade despite challenging times during the Covid pandemic and that additional funds have been invested. Alpine remains registered on the New Zealand Companies Register and filed a recent annual return in June 2023. In these circumstances and that I have nothing further to show me any reason not to, I order that Alpine complies with the orders set out at [1] above.

⁶ Employment Relations Act 2000, Section 137(1)(b)

What if any costs including the filing fee on this application are to be awarded?

[11] I am satisfied that Ms Tahuhu is entitled to an order for costs on this application. On its usual notional daily rate, a full hearing day is \$4,500.00 for the first day. I find that the investigation meeting attracts a quarter of this being \$1,125.00 taking into account preparation and attendance with no appearance by Alpine. I order Alpine to pay this to Ms Tahuhu together with the filing fee incurred being \$71.55.

Summary of finding and orders

[12] I find Alpine has not complied with the Authority's Determination dated 25 November 2022.

[13] Within 28 days from the date of this determination Alpine 182 Degrees Limited is to now comply with the following by paying Tracy Tahuhu:

- (a) \$18,000.00 in compensation for humiliation, loss of dignity and injury to feelings for unjustified disadvantage and unjustified dismissal;
- (b) \$316.25 being an unlawful deduction from Ms Tahuhu's final pay;
- (c) \$2,734.86 in wage arrears and holiday pay;
- (d) interest on the sum of \$2,734.86 from 25 January 2022 to the date of payment using the Ministry of Justice civil debt calculator⁷;
- (e) lost wages of \$1,800.00;
- (f) costs of \$3,500.00; and
- (g) the filing fee of \$71.56.

[14] Within 28 days from the date of this determination Alpine 182 Degrees Limited is to pay Tracy Tahuhu a further total of 1,125.00 in costs and the filing fee of \$71.55 for the bringing of this application.

⁷ Using as ordered the Ministry of Justice civil debt calculator: www.justice.govt.nz/fines/civil-debt-interest-calculator.

[15] Imposition of a compliance order is a serious matter. Should Alpine fail to comply with the compliance order made, Ms Tahuu will be entitled to pursue the breach in the Employment Court or the District Court. The Employment Court has powers to impose on a company a fine not exceeding \$40,000 and orders for property to be sequestered.⁸

Antoinette Baker
Member of the Employment Relations Authority

⁸ Sections 139 and 140(6) Employment Relations Act 2000.