



# Employment Court of New Zealand

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## Tait v Robin [2018] NZEmpC 105 (12 September 2018)

Last Updated: 20 September 2018

### IN THE EMPLOYMENT COURT AUCKLAND

[\[2018\] NZEmpC 105](#)  
EMPC 138/2018

IN THE MATTER OF    an application for a compliance order  
BETWEEN                HEATHER TAIT  
                              Plaintiff  
AND                        RICHARDENE (RICHIE) ROBIN AND  
                              ALLAN SHERSON  
                              Defendants

Hearing:                12 September 2018 (Heard at  
                              Auckland)  
Appearances:        W Reid, advocate for plaintiff  
                              No appearance for  
                              defendants  
Judgment:             12 September 2018

### ORAL JUDGMENT OF JUDGE M E PERKINS

[1] The proceedings before me today involve an application by the plaintiff, Heather Quick (formerly known as Heather Tait). She is seeking a compliance order against the defendants Richardene (also known as Richie) Robin and Allan Sherson.

[2] These proceedings have a history in that on 21 September 2016 following a personal grievance proceeding, brought by way of challenge to the Court, I ordered the defendants to pay to the plaintiff the sums of \$5,000 by way of compensation for hurt, humiliation and injury to feelings, and the sum of \$1,992.92 as compensation for lost wages. Later, on 2 November 2016, following representations being made to me on the matter of costs, I ordered the defendants to pay the sum of \$1,571.56, being the costs awarded by the Employment Relations Authority (the Authority) at the earlier proceedings from which the challenge to this Court was made. In addition to that, I

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ordered the sum of \$5,004.44 as costs and disbursements incurred by the plaintiff in bringing the challenge to the Court.

[3] Prior to 2 November 2016, the defendants had in fact already paid to the plaintiff the sum of \$1,576.56, being the costs awarded in the Authority.

[4] In respect of the proceedings today, I am satisfied that the statement of claim and related documents were served on the defendants. No steps have been taken by them in the proceedings. Accordingly, I arranged with the Registrar to set the proceedings down for a formal proof hearing, and the matter was called before me today for this purpose. Even though the defendants had taken no steps in the proceedings, I directed that details of the hearing today be served upon them. Also served upon them was a minute which I had issued on 20 July 2018 explaining what the hearing today would be about and how it would be conducted and dealt with if they wished to participate in it. I had directed that a copy of that minute be served on the defendants so that they were fully informed. I indicated in the minute that even though they had taken no

steps in the proceedings, they may still wish to appear in Court today, although they would need to seek leave to defend the matter if that was their intention.

[5] I am satisfied that details of the hearing today and my minute were served upon the defendants. There is sufficient documentation which the Registry of the Court has obtained to establish that. When the matter was called today, no appearance was made by the defendants, and out of an abundance of caution, I asked my Court Registrar to call them in the corridors of the Court. That was done, but they were not within the precincts of the Court.

[6] The matter has proceeded today to consider the plaintiff's application pursuant to [ss 139\(1\)](#) and (2) of the [Employment Relations Act 2000](#) (the Act). Under these provisions, where there has been failure to comply with or observe an order, determination, direction or requirement made or given under the Act by the Court, then a compliance order may be applied for. The defendants are parties in the proceedings. Accordingly, under [s 139\(2\)](#) the Court is entitled to make a compliance order against them.

[7] [Section 140](#) of the Act sets out further provisions relating to a compliance order made by the Court. Where a compliance order is made, the Court may then adjourn the proceedings rather than the proceedings coming to an end. That adjournment is for a period of time to enable the persons against whom the compliance order is made to comply and for the Court to monitor the matter. If they fail to comply with the compliance order, then the plaintiff may make a further application to the Court which will be heard at the resumed hearing. That application would be for an order under [s 140\(6\)](#) of the Act. Penalties are provided for under that section, such that the Court may fine the person who has failed to comply, or imprison them, or make a sequestration order against their property. Those are draconian remedies, and the Court would prefer to apply them only as a last resort.

[8] Today, Mr Reid, appearing for the plaintiff, has made brief submissions to me and called the plaintiff, Ms Quick (formerly Ms Tai) to give evidence. She has confirmed the contents of a witness statement which she had previously prepared and that sets out the circumstances that have applied in this matter since the original judgments of the Court making orders for payment of monetary awards against the defendants. There have been some payments made under an instalment agreement between the parties, but the amount now outstanding is \$7,494.44.

[9] I am satisfied on two relevant matters in respect of the plaintiff's application for a compliance order. Firstly, I am satisfied by her evidence, and accompanying documents she has produced, that the defendants have not complied with the orders which were contained in my earlier judgments.

[10] Secondly, I am persuaded that the defendants are conducting a business or businesses in Hamilton from which they will be deriving sufficient income for them, even now, to pay the full amount of the amount outstanding. Certainly, they have had time to have discharged the entire debt since the date that the judgments were issued. I am bound to say that the impression I have gained is that they are simply refusing to make payment to the plaintiff from some point of principle.

[11] In any event, having been satisfied by the evidence that a compliance order should be made, there will be a compliance order. The defendants are ordered to

comply with the judgments to which I have earlier referred by making payment to the plaintiff of the outstanding balance of \$7,494.44.

[12] In addition to that, they are ordered to make payment to the plaintiff of the sum of \$1,000 as a contribution towards the legal costs which she has incurred in having to pursue them in this matter. Those sums, totalling \$8,494.44, are to be paid by the defendants to the plaintiff, or her advocate Mr Reid, on or before 4 pm on Wednesday 19 September 2018.

[13] Under [s 140\(5\)](#) of the Act, as I have already earlier indicated, these proceedings may be adjourned so that the Court is able to monitor performance of the compliance order. It is not going to be possible to have a further hearing of the matter until 10 October 2018. These proceedings are, therefore, adjourned until 2.15 pm on 10 October 2018. On that date, the Court will inquire whether or not the defendants have complied. If they have not, then on or before that date, Mr Reid, on the plaintiff's behalf, will need to file an application seeking one or more of the further orders that are provided for in [s 140\(6\)](#) of the Act.

[14] The defendants need to understand, however, that if they do not comply with the compliance order that is now made by the Court and the matter comes back so that one of the remedies under [s 140\(6\)](#) is made against them, that does not expunge the debt that they still owe to the plaintiff. The plaintiff is still entitled to the sums of money which are outstanding under the earlier judgments of this Court despite any penalty imposed.

[15] As it is likely, if there is further non-compliance by the defendants, that the plaintiff will include in the remedies she seeks a sentence of imprisonment, I will arrange for the Court on 10 October 2018 to sit in a courtroom with custodial facilities. I would also make a direction that the plaintiff, in preparation for that hearing, arrange for the filing and service on each of the defendants of a witness summons so that they are required to appear in Court on that adjourned date.

[16] The reason that I would require them to appear on that day as witnesses, if they do not comply with the orders now

made, is that it will be essential for the Court to

have details of their personal circumstances and their present financial position before considering the remedies of fine, imprisonment or sequestration. Accordingly, included in the witness summons will be a direction to them to bring with them sufficient documents in order for them to allow the Court to see what their present circumstances are.

[17] The documents they will be required to bring will include all of their own personal bank statements and the bank statements and company accounts for the companies that they control. For the purposes of considering a sequestration order, they will need to produce documents showing the assets which they personally own. The company records should disclose their shareholdings in the companies and will hopefully also show the state of the shareholders' accounts in those companies, which will record debts which may be owing by the companies to them as shareholders. These are all documents which the Court should have so that it can appropriately consider the remedies under [s 140\(6\)](#).

M E Perkins Judge

Oral judgment delivered at 2.46 pm on 12 September 2018

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