

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURĀU ROHE**

[2022] NZERA 309
3168021

BETWEEN

MICHAEL TANE
Applicant

AND

FARRAND ORCHARDS
LIMITED
Respondent

Member of Authority: Marija Urlich

Representatives: Michelle Pollack, counsel for the Applicant
Martin Nicholls, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 24 May 2022, from the Applicant
14 June 2022, from the Respondent

Determination: 11 July 2022

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mr Tane seeks compliance orders with determinations of the Authority dated 15 November 2021 and 26 November 2021 in which awards were made in his favour.¹ He also seeks an award of interest on the unpaid awards, costs and certificates of determination. Farrand Orchards Limited (FOL) opposes the compliance order sought.

¹ *Tane v Farrand Orchards Limited* [2021] NZERA 503 and *Tane v Farrand Orchards Limited* [2021] NZERA 531.

The Authority's investigation

[2] By consent this matter is determined on the papers. Mr Tane filed an affidavit dated 24 May 2022 in support of his application. The parties have filed submissions.

[3] 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.

Should a compliance order be made against FOL?

[4] Mr Tane averred he had not received any payment from FOL of the awards made in his favour in the determinations being:

\$15,000 compensatory damages under s 123(1)(c)(i);

\$18,480 lost wages under s 123(1)(b);

\$1,478 in holiday pay for the lost wages; and

\$4,571.56 costs award including the filing fee.

[5] Mr Tane further avers at that date FOL's payment of the awards had been outstanding for over six months, that it has given no indication of an intention to pay and not applied for a stay. He avers FOL has assumed it has an automatic right of stay and has delayed engaging with steps required to progress this application which has caused him disadvantage because he has had to take enforcement proceedings placing financial and emotional stress on him and his family. He avers he will repay anything owed if FOL's challenge is successful.

[6] In submissions filed on Mr Tane's behalf he submits the compliance orders are warranted because FOL has made clear it has no intention of paying the awards and has not taken reasonable steps, including applying for a stay,

[7] FOL submits it would not be in the interests of justice for the Authority to exercise its discretion under s 137(1)(b) of the Act to order compliance with the unpaid awards because:

- it has not engaged in delay tactics;
- it has challenged the Authority's determination on a non-de novo basis;
- the challenge was heard by the Court on 21 and 22 June 2022;
- given the narrow point before the Court for consideration it is unlikely the Court will take long to issue the determination; and
- it would be counterintuitive and contrary to justice for the compliance order to be issued given there is a risk the awards may be altered by the Court.

[8] A challenge does not operate as a stay: s 180 of the Act.

[9] An application for a stay is the statutory mechanism available to consider how in the face of a challenge justice may be done between the parties in respect of awards.

[10] FOL has not applied for a stay to the Authority or, it is understood, the court. It is not clear why. The effect of declining the compliance order would be to grant a de facto stay which could be seen as undesirable - it arguably undermines the statutory processes in place to deal with issues of this nature particularly given how a stay may be crafted in ways which are not possible when declining a compliance order for example an order for payment into court.

[11] Having considered and weighed all the relevant factors, I find it is appropriate that I exercise my discretion under s 137(1)(b) of the Act to order compliance with the awards contained in the determinations referred to in paragraph [1].

[12] Within 14 days of the date of this determination Farrand Orchards Limited is ordered to comply with those determinations and pay Michael Tane the awards contained therein as set out at paragraph [4] above.

[14] While to date Mr Tane has been denied the awards made in his favour this is not a matter appropriate to for an order for interest.

[15] Certificates of determination for the determinations referred to in paragraph [1] are to be issued forthwith.

Outcome

[16] Within 14 days of the date of this determination Farrand Orchards Limited must comply with the determinations *Tane v Farrand Orchards Limited* [2021] NZERA 503 and *Tane v Farrand Orchards Limited* [2021] NZERA 531 and pay Michael Tane the awards made in his favour.

[17] Certificates of determination for *Tane v Farrand Orchards Limited* [2021] NZERA 503 and *Tane v Farrand Orchards Limited* [2021] NZERA 531 are to be issued forthwith.

Costs

[18] Costs are reserved. The parties are encouraged to attempt to resolve the issue of costs themselves. If this is not possible and a contribution to costs is sought, Mr Tane should file and serve a costs memorandum within 14 days of the date of this determination. FOL should file any reply memorandum within 7 days of receipt of such.

Marija Urlich
Member of the Employment Relations Authority