

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Konelio Uelese and Menimo Uelese (Applicants)
AND Conference of Samoan Adventist Church (Respondent)
REPRESENTATIVES Brian Spong, Advocate for Applicants
No Appearance for Respondent
MEMBER OF AUTHORITY Leon Robinson
INVESTIGATION MEETING 28 August 2006
DATE OF DETERMINATION 28 August 2006

DETERMINATION OF THE AUTHORITY

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- A. The Conference of Samoan Adventist Church is ordered to comply with the Record of Settlement dated 22 May 2006 and to do so by 25 September 2006.
- B. The Conference of Samoan Adventist Church is ordered to pay to Konelio Uelese and Menimo Uelese interest on the sum of \$7,000.00 at the rate of 9% per annum from 12 June 2006 until the date of payment.
- C. The Conference of Samoan Adventist Church is ordered to pay the sum of \$2,000.00 as a penalty. Of this sum, pursuant to section 136 of the Employment Relations Act 2000, \$1,000.00 is to be paid to Konelio Uelese and Menimo Uelese and the remaining \$1,000.00 into the Authority, to be paid by the Authority into the Crown Bank Account.
- D. The Conference of Samoan Adventist Church is ordered to pay to Konelio Uelese and Menimo Uelese costs of \$1,681.25.
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The Application

[1] The applicants Mr Konelio Uelese ("Mr Uelese") and his wife Mrs Menimo Uelese ("Mrs Uelese") make application for a compliance order and penalty against the respondent church the Conference of Samoan Adventist Church ("the Church").

[2] Compliance is sought with the terms of a Record of Settlement made under section 149 of the *Employment Relations Act 2000* on 22 May 2006.

[3] The Authority's file documents considerable difficulty in obtaining the Church's co-operation in this investigation. I dispense with a chronological narrative and note that by Minute of 14 August 2006 I directed the investigation proceed to a meeting today as a consequence of the Church's failure to take any steps.

[4] The Church did not attend today's investigation meeting. I telephoned the Church's Mr Anthony Vaotuua at 11.10 am. He advised the Church was not attending the investigation meeting today. When he was asked, he said he did not know of the meeting today. He then referred the Authority to his solicitor. The Authority was advised the solicitor was not available today.

[5] I am satisfied however, that the Church was properly notified of today's investigation meeting and of the applications sought. I am further satisfied that my direction that notice of the same was to be served at the Church's registered address for communication has been complied with. I note the Authority's file records the date of service of notification at the registered address for communication.

[6] The Church does not appear today and it has given no advice of any good reason for its failure to attend. In accordance with the Authority's regulations, I proceeded to deal with the matter fully as if the Church had attended.

The Non-compliance

[7] The Church agreed to pay Mr and Mrs Uelese the sum of \$8,000.00. It has paid \$1,000.00. It sought to vary the terms of payment of the balance but Mr and Mrs Uelese rejected the variation.

[8] Mr Spong tells the Authority of efforts to engage the Church in a dialogue directed at compliance, but the Church has failed to reciprocate or take any steps whatsoever to comply with the terms of the recorded settlement. Mrs Uelese gives sworn evidence today that the balance of \$7,000.00 remains unpaid and she confirms the situation of non-compliance.

[9] I am satisfied that the Church has not complied with the record of settlement dated 22 May 2006. I am satisfied that there is no evidence of an excuse or justification for the Church's continuing failure to comply.

[10] The Church's continuing non-compliance places it at peril of serious consequences. The Authority's orders may be the subject of a further application for compliance in the Employment Court. The Court is empowered to impose penalties for continuing non-compliance which include imprisonment, a fine not exceeding \$40,000.00 or the sequestration of property.

The Penalty

[11] I am satisfied that on the balance of probabilities, this is a deserving case for a penalty and such a penalty is necessary to encourage observance of the objects of the *Employment Relations Act 2000*. It is appropriate to denounce the Church's failure to comply by way of penalty.

Costs

[12] The applicants have also sought costs. Their statement of problem claims full costs. The Church has not responded. I consider it entirely appropriate that Mr and Mrs Uelese be reimbursed their full costs. Those costs are notified by Mr Spong to be \$1,681.25. Those costs are reasonable. I make an order accordingly.

Orders

[13] I order the Conference of Samoan Adventist Church to comply with the Record of Settlement dated 22 May 2006 and to do so by 25 September 2006.

[14] I order the Conference of Samoan Adventist Church to pay to Konelio Uelese and Menimo Uelese interest on the sum of \$7,000.00 at the rate of 9% per annum from 12 June 2006 until the date of payment.

[15] I order the Conference of Samoan Adventist Church to pay the sum of \$2,000.00 as a penalty. Of this sum, pursuant to section 136 of the Employment Relations Act 2000, \$1,000.00 is to be paid to Konelio Uelese and Menimo Uelese and the remaining \$1,000.00 into the Authority, to be paid by the Authority into the Crown Bank Account.

[16] I order the Conference of Samoan Adventist Church to pay to Konelio Uelese and Menimo Uelese costs of \$1,681.25.

[17] In the event of continuing non-compliance, the applicants may make further application to the Authority.

Leon Robinson
Member of Employment Relations Authority