

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 109
5423721

BETWEEN

RICHARD UERATA-
JENNINGS
Applicant

AND

THE SCOUT ASSOCIATION
OF NEW ZEALAND
Respondent

Member of Authority: Trish MacKinnon

Representatives: Phil Mitchell, for the Applicant
Niamh Lawless for the Respondent

Investigation Meeting: On the papers

Determination: 9 September 2013

DETERMINATION OF THE AUTHORITY

Application for Compliance Order

[1] In my substantive determination of Mr Uerata-Jennings' personal grievance on 14 May 2013, I awarded him the remedies of reimbursement of lost wages in the sum of \$1,950 less PAYE, and \$500 as compensation for humiliation, loss of dignity and injury to feelings. Mr Uerata-Jennings has not received these remedies and now seeks a compliance order for their payment. He also seeks a penalty against the Scout Association of New Zealand for its failure to make payment, as well as costs.

[2] Subsequent to his application for compliance with those awards, I awarded Mr Uerata-Jennings the sum of \$3,500 in costs by a determination dated 15 July 2013. Counsel for Mr Uerata-Jennings notified the Authority and the respondent in the course of a telephone conference on 12 August 2013 that a compliance order was also sought for the payment of that sum.

[3] The Scout Association of New Zealand (Scouts) says it has not paid the amounts awarded by the Authority to Mr Uerata-Jennings because it has a judgment debt against him in the sum of \$14,001.54. This was obtained in the District Court in April 2012 and relates to Mr Uerata-Jennings' use of Scouts' travel and credit cards for his personal use.

[4] Scouts says Mr Uerata-Jennings has not paid it any part of the debt he owes. It has sought his agreement to offset the Authority awards against the judgment debt and says Mr Uerata-Jennings has not agreed to this.

[5] The Authority's power to order compliance is discretionary and Scouts asks that it exercise its discretion to decline Mr Uerata-Jennings' application. It says there are no grounds for the award of a penalty or costs in relation to his application.

[6] In the course of the 12 August 2013 telephone conference the parties asked me to make a determination on the papers on the applications for compliance orders. They were content that I had sufficient information to do so, and said they did not wish to make further submissions on the matter.

Discussion

[7] The Authority derives its power to award compliance from s. 137 of the Employment Relations Act (the Act). The relevant parts of the section in relation to Mr Uerata-Jennings' application provide:

(1) This section applies where any person has not observed or complied with –

(a) ...

(b) any order, determination, direction, or requirement made or given under this Act by the Authority or a member or officer of the Authority.

(2) Where this section applies, the Authority may, in addition to any other power it may exercise, by order require, in or in conjunction with any matter before the Authority under this Act to which that person is a party or in respect of which that person is a witness, that person to do any specified thing or to cease any specified activity, for the purpose of preventing further non-observance of or non-compliance with that provision, order, determination, direction, or requirement.

(3) The Authority must specify a time within which the order is to be obeyed.

[8] Scouts has acknowledged that it has not complied with the awards made to Mr Uerata-Jennings by determinations of the Authority. I consider its request for Mr Uerata-Jennings' agreement to an offsetting of those awards against the larger amount he owes to Scouts to be a reasonable one.

[9] However, it is not within my power to order the offsetting of awards made in the Authority against the judgment obtained in the District Court. Nor is it within my power to order Mr Uerata-Jennings to exercise his conscience in this matter and agree to such offsetting.

[10] Scouts is therefore ordered to:

- a. Comply with the Authority's determination of 14 May 2013 by making the payments specified at [68] (a) and (b); and
- b. Comply with the Authority's costs determination of 15 July 2013 by making the payment specified at [12].

[11] All payments are to be made within 14 days of the date of this determination.

Penalty

[12] In the circumstances a penalty is not appropriate and I decline to order one.

Costs

[13] Scouts is ordered to reimburse the cost of the filing fee in the Authority, being \$71.56.

Trish MacKinnon
Member of the Employment Relations Authority