

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2012] NZERA Auckland 62
5364103**

BETWEEN STEPHEN WATSON
 Applicant

AND GREEN ENERGY
 CORPORATION LIMITED
 First Respondent
 DAVID CREAMER
 Second Respondent

Member of Authority: Eleanor Robinson

Representatives: Danny Gelb Advocate for Applicant
 David Creamer for Respondent

Investigation Meeting: 20 February 2012

Determination: 20 February 2012

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] The Applicant, Mr Stephen Watson, has applied to the Authority under s 137 of the Employment Relations Act 2000 (“the Act”) for an order requiring the First Respondent, Green Energy Corporation Limited (“GEC”) to comply with determinations given by the Authority.

[2] On 15 September 2012 under [2011] NZERA Auckland 399 the Authority ordered GEC to pay Mr Watson the sum of:

- (i) \$5,000.00 in respect of lost remuneration
- (ii) \$2,800.00 in respect of distress compensation
- (iii) \$71.56 in respect of the filing fee

[3] Under the same determination, Mr Watson was ordered to pay GEC the sum of \$174.29 in respect of a successful counterclaim.

[4] On 5 October 2011 under [2011] NZERA Auckland 434 the Authority ordered GEC to pay Mr Watson the sum of:

- (i) \$5,000.00 in respect of legal costs
- (ii) \$71.56 in respect of the filing fee

[5] On 21 November 2012 Mr Watson applied to the Authority for a compliance order, claiming that GEC had not paid him the monies he was entitled to under the determinations. Mr Watson additionally sought an order for the payment of penalties by GEC, and by Mr David Creamer, Second Respondent and Director of GEC, under s 149(4) of the Employment Relations Act 2000 (“the Act”)

Compliance Order

[6] I am satisfied that GEC has not complied with the terms of the Authority’s determinations of 15 September 2012 and 5 October 2012.

[7] Mr Creamer attributed the reason for non-payment of the outstanding sums to the poor financial situation of GEC and had produced financial information in support of this submission.

[8] Mr Creamer further explained that the Appeal of the Authority’s decision in the substantive matter to the Employment Court, now discontinued, had been brought on genuine grounds and not as a means of delaying payment of the outstanding monies to Mr Watson.

[9] Mr Creamer stated that he was, and remained, willing to make payment to Mr Watson of the outstanding sums, but submitted that in the circumstances, GEC sought time to make the payments by means of instalment.

[10] Mr Watson indicated that in these circumstances the proposal that an order for compliance by GEC be made by means of instalments was acceptable to him.

[11] I am satisfied that GEC has not complied with the terms of the Authority’s determinations of 15 September 2012 and 5 October 2012. It is just in the circumstances for an order to be made requiring GEC to comply with the determinations, but in all the circumstances those payments are to be made as follows. GEC is ordered to pay Mr Watson:

- (i) The sum of \$4,000.00 on or before 29 February 2012

- (ii) The sum of \$2,000.00 on 30 March 2012
- (iii) The sum of \$2,000.00 on 30 April 2012
- (iv) The sum of \$2,000.00 on 30 May 2012
- (v) The sum of \$2,000.00 on 30 June 2012
- (vi) The sum of \$2,000.00 on 30 July 2012

7. The sum of \$2,000.00 on 30 August 2012

[12] Compliance with the schedule of payments will be a full and final settlement of all outstanding matters between the parties. For the sake of clarity Mr Watson is not required to make payment of the sum of \$174.29 ordered to be made by Mr Watson to GEC.

[13] There will be no order for penalties against GEC or Mr Creamer.

[14] For the information of GEC, failure to comply with an order such as this one made by the Authority under s 137 of the Act may provide a basis for an application to be made by Mr Watson to the Employment Court for enforcement of the order. Under s140 of the Act, where the Court is satisfied that any person has failed to comply with a compliance order made under s137, the Court may order remedies, including a fine not exceeding \$40,000 and/or the seizure of property and for the proceeds of sale to be distributed to the person enforcing the Authority's order.

Costs

[15] No order is sought as to costs.

Eleanor Robinson
Member of the Employment Relations Authority