

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 722
3253599

BETWEEN	SAM WILSON Applicant
AND	AZ SCAFFOLDING (2017) LIMITED Respondent

Member of Authority:	Davinnia Tan
Representatives:	Richard Anderson, advocate for the Applicant No appearance for the Respondent
Investigation Meeting:	On the papers
Submissions received:	17 November 2023 from the Applicant No submissions from the Respondent
Determination:	5 December 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Wilson seeks that a compliance order be issued to compel AZ Scaffolding (2017) Limited (AZ Scaffolding) to pay him the money he was awarded by the Authority in the substantive determination it issued on 17 May 2023, and the costs determination it issued on 26 June 2023.

[2] AZ Scaffolding has not participated in the Authority's investigation.

[3] Aaron Michael David Smith is the sole director and shareholder of AZ Scaffolding.

Authority's determinations

[4] On 17 May 2023 the Authority issued a determination¹ in which Member Anderson found that Sam Wilson was unjustifiably dismissed by AZ Scaffolding (2017) Limited (AZ Scaffolding) and ordered AZ Scaffolding to make payment to Mr Wilson of compensation for humiliation, loss of dignity and injury to feelings. AZ Scaffolding was also ordered to make payment to Mr Wilson as to an arrears of wages.

Orders made against AZ Scaffolding

[5] The Authority ordered AZ Scaffolding to pay Mr Wilson:

- (a) \$15,000 (without deduction) as compensation for humiliation, loss of dignity and injury to feelings under s 123(1)(c)(i) of the Act relating to the unjustified dismissal (to be paid within 28 days of the date of the substantive determination dated 17 May 2023); and
- (b) \$198.00 on account of wages owed relating to the unilateral reduction to his hours of work (to be paid within 28 days of the date of the substantive determination dated 17 May 2023); and
- (c) \$3000.00 as a contribution towards Mr Wilson's costs of representation (to be paid within 28 days of the costs determination dated 26 June 2023).

[6] Mr Wilson says that none of this money has been paid.

[7] As such Mr Wilson is seeking a compliance order requiring AZ Scaffolding pay the sums outstanding under both determinations.

The Authority's investigation

[8] On 10 November 2023, a case management conference was held by telephone with Mr Wilson and his advocate. There was no appearance for AZ Scaffolding.

[9] It was agreed that the matter would be heard 'on the papers' and I issued timetabling instructions for Mr Wilson's submissions to be lodged and served by 17 November 2023 and for AZ Scaffolding's submissions to be lodged and served by 24 November 2023.

¹ *Wilson v AZ Scaffolding (2017) Limited* [2023] NZERA 249.

[10] The Authority received confirmation that all notices of directions, including the scheduling of the case management conference and of the timetabling directions, were delivered to both AZ Scaffolding's registered address on the Companies' Register and email address (set out on its website via the Companies Register). AZ Scaffolding has not engaged with the Authority to date on Mr Wilson's application for a compliance order. I am satisfied that AZ Scaffolding has been properly served in accordance with regulation 16(3) of the Employment Relations Authority Regulations 2000 and I shall proceed to issue a determination.

[11] 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.

The Law

[12] Section 137 of the Employment Relations Act 2000 ("the Act") gives the Authority the discretion to make a compliance order in a range of different situations, including regarding any determination it has issued.²

[13] Section 137(3) requires the Authority to specify a time within which the compliance order is to be obeyed.

The issues

[14] The following issues are to be determined:

- (a) Whether a compliance order is appropriate and necessary;
- (b) What costs and disbursements should be awarded?

Whether a compliance order is appropriate and necessary

Mr Wilson's submissions

[15] Mr Wilson stated that it has made the following attempts to communicate with AZ Scaffolding to date but received no response:

- (a) 18 May 2023 – attempt made to discuss Authority's substantive determination;
- (b) 29 May 2023 – attempt made to discuss resolving issue of costs;

² Section 137(1)(b) of the Act.

- (c) Following AZ Scaffolding's unsuccessful application to reopen the investigation, on 18 September 2023, attempt made to communicate with AZ Scaffolding;
- (d) 25 September 2023 – attempt to discuss the Authority's substantive and costs determination and email correspondence advising that he was willing to withdraw the compliance order upon payment in full of monies owed as a result of the Authority's determinations.

[16] On 15 November 2023, Mr Wilson's advocate called and left a voice message for Mr Smith to discuss the determinations issued and the compliance order application. That same day, Mr Smith returned the call but when asked if he would be complying with the Authority's orders, he indicated he had no interest in complying and ended the call.

Analysis

[17] I am satisfied based on the uncontested evidence provided by Mr Wilson that AZ Scaffolding is in breach of its obligations to make payment of the following sums to Mr Wilson as ordered in both the substantive and cost determinations:

- (a) \$15,000 (without deduction) (to be paid within 28 days of the date of the substantive determination dated 17 May 2023); and
- (b) \$198.00 (to be paid within 28 days of the date of the substantive determination dated 17 May 2023); and
- (c) \$3000.00 as a contribution towards Mr Wilson's costs of representation in the investigation meeting (to be paid within 28 days of the costs determination dated 26 June 2023).

[18] I am also satisfied that based on the uncontested evidence that there is no indication that AZ Scaffolding intends to voluntarily comply with the orders; rather, the evidence I have indicates that it is aware of the orders and has chosen not to comply with them. It is therefore appropriate and necessary that a compliance order be made.

Warning about breaches of this compliance order

[19] If AZ Scaffolding fails to comply with this compliance order, Mr Wilson may apply under s 138(6) of the Act to the Employment Court for the exercise of its powers under s 140(6) of the Act.

[20] Any breach of the Authority's compliance order must therefore be pursued by Mr Wilson in the Employment Court.

What costs and disbursements should be awarded?

[21] Mr Wilson, as the successful party, is entitled to a contribution towards additional legal costs incurred as a result of having to seek the compliance order.

[22] As this matter was heard 'on the papers', a minimal amount in recognition of the costs incurred by Mr Wilson in bringing this application of compliance is appropriate.

[23] Accordingly, within 14 days of the date of this determination, AZ Scaffolding is ordered to pay \$1,000 costs plus \$71.56 to reimburse the filing fee.

Outcome

[24] Within 14 days of the date of this determination AZ Scaffolding must pay Mr Sam Wilson \$19,269.56 (being \$15,198 in accordance with the substantive determination and \$3000 in accordance with the costs determination, plus \$1071.56 in accordance with this compliance determination).

[25] Interest continues to run on NZ\$15,198 of the amount Mr Wilson has been awarded. Interest must be calculated using the civil debt calculator on the Ministry of Justice website, from 14 June 2023 until the full NZ\$15,198 plus all of the interest that is payable has been fully paid.