

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2024] NZERA 419
3272119

BETWEEN

KYLIE WILSON
Applicant

AND

EAST COAST CLEANING
LIMITED
Respondent

Member of Authority: Claire English

Representatives: Ashleigh Fechny, advocate for the Applicant
Deepak Badhwar for the Respondent

Investigation Meeting: On the papers

Submissions received: 18 April 2024 from Applicant
None received from Respondent

Determination: 12 July 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 6 December 2023, the Employment Relations Authority ordered the respondent (East Coast Cleaning) to pay to the applicant (Ms Wilson) the following sums by 3 January 2024:

- a. \$3,682.50 gross in loss remuneration;
- b. \$16,000 without deduction in compensation for humiliation, loss of dignity, and injury to feelings;
- c. \$358.02 on a gross basis, as reimbursement for an unlawful deduction from wages;
- d. \$6,750.00 without deduction as a contribution to costs; and
- e. \$71.56 as reimbursement of the filing fee.

[2] Ms Wilson, via her advocate, advises the Authority that she has sought payment from East Coast Cleaning, and it did not respond or pay.

[3] She now seeks a compliance order against East Coast Cleaning for the sums awarded to her.

[4] East Coast Cleaning has not responded to her claims. Although East Coast Cleaning's sole director, Mr Badhwar, participated in the substantive matter and attended the investigation meeting in person, he has not responded to these compliance proceedings.

[5] This raises the question of whether I should proceed.

[6] The Authority's file shows that a copy of the statement of problem and its attachment (which was a copy of the Authority's determination making orders for payment in favour of Ms Wilson) was served on East Coast Cleaning at its registered office address which is also its address for service on 12 January 2024. It was signed for by Deepak Badhwar.

[7] No statement in reply was received. The Authority then served a notice of a case management conference call on East Coast Cleaning at that same registered address. It was again signed for by Deepak Badhwar. Although a case management conference was held at the time set out in the notice, Mr Badhwar did not answer his phone when the Authority called.

[8] The matter was scheduled for consideration on the papers, and time was allowed for both parties to file submissions and any documents they wished the Authority to consider. A copy of the directions of the Authority was served on East Coast Cleaning at that same registered address. It was again signed for by Deepak Badhwar.

[9] Submissions and relevant documents were filed by the applicant, and served on East Coast Cleaning. Time was allowed for East Coast Cleaning to file submissions and documents as per the directions of the Authority. Correspondence was also copied to Mr Badhwar by way of email. No response has yet been received from East Coast Cleaning.

[10] I am satisfied that the relevant documents setting out this claim, and the relevant documents setting out the Authority's process have been properly served on East Coast Cleaning and have been received by its director, Mr Badhwar. I am satisfied that East Coast Cleaning has been made aware of these proceedings, and has been provided with opportunities to participate in the process, and has not.

[11] Accordingly, I consider it appropriate for me to continue to determine the matter on the papers as East Coast Cleaning has been advised would occur.

The Authority's investigation

[12] For the Authority's investigation legal submissions and relevant documents were provided on behalf of Ms Wilson. Although time was allowed for receipt of documents and submissions by East Coast Cleaning, none were received.

[13] 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 issues

[14] The issues requiring investigation and determination were:

- (a) Should a compliance order be granted against the respondent due to non-payment of monies owed to the applicant?
- (b) Should interest be awarded?
- (c) Should the applicant be awarded a further sum of \$1,125.00 in costs on this application?
- (d) Should the respondent be required to reimburse the applicant for the filing fee of \$71.55?

Background

[15] By way of determination dated 6 December 2023¹, East Coast Cleaning was ordered to make various payments to Ms Wilson as set out in paragraph [1]. These sums were to be paid within 28 days of the date of the determination.

¹ [2023] NZERA 724.

[16] By way of email dated 6 December 2023, Ms Wilson's advocate wrote to Mr Badhwar seeking payment, and providing Ms Wilson's bank account details for the payment as well as an invoice for the costs and filing fee.

[17] On 3 January 2024, a reminder email was sent. As no payment was received, a statement of problem was filed in the Authority on 10 January 2024. My understanding is that East Coast Cleaning has made no payments of any sort to Ms Wilson to date, has not responded to correspondence, and (consistent with this) has not engaged with the Authority either.

Compliance Orders

[18] The Authority's power to grant compliance is discretionary. In this instance, I consider that it is reasonable for me to have some confidence that East Coast Cleaning, through its director Mr Badhwar, is aware of the Authority's determination, and is also aware of these proceedings. Documents including the Authority's determination and this claim, have been sent to Mr Badhwar not just by way of East Coast Cleaning's registered address, but also to Mr Badhwar's email address. These addresses have previously allowed communication to occur with Mr Badhwar, and he has signed in receipt of documents.

[19] The evidence before me is that the sums owed to Ms Wilson remain unpaid after some considerable time.

[20] East Coast Cleaning has not communicated to the Authority to explain why this is the case, or to give any reason why the compliance orders sought by Ms Wilson should not be granted. There is the suggestion that East Coast Cleaning and Mr Badhwar have decided not to engage when it comes to matters of payment.

[21] Having considered matters, I find it is appropriate for an order to be made requiring East Coast Cleaning to comply with the determination. Orders are made accordingly.

[22] Ms Wilson has claimed for interest on the amounts ordered to be paid by East Coast Cleaning. Clause 11 of schedule 2 of the Act provides that the Authority may order the payment of interest calculated in accordance with the Interest on Money Claims Act 2016, and that this may be for the whole or the part of any period between the date when the cause of action arose and the date of payment.

[23] I consider it appropriate to order interest on the sums owing to Ms Wilson. Although submissions for Ms Wilson have referred to the due date of 3 January 2024, I note the potential for the adverse impact of the Christmas and New Year statutory holidays, as well as the Authority's closure and the usual exclusion of the days beginning with 25 December in any year and ending with 5 January in the following year. My view is that it is appropriate for me to exercise the discretion allowed for in clause 11 by giving East Coast Cleaning the benefit of these additional days when calculating interest, making the start date for the calculation of interest using the Civil Debt calculator 16 January 2024. Orders are made accordingly.

Filing Fee

[24] Ms Wilson has claimed for the reimbursement of the filing fee of \$71.55. As she is the successful party, she is entitled to this reimbursement. Orders are made accordingly.

Orders

[25] East Coast Cleaning Limited is ordered to pay Ms Wilson the following amounts:

- a. The sum of \$26,862.08 as set out in determination [2023] NZERA 724;
- b. Interest at the rate prescribed in the Interest on Money Claims Act 2016 (which is to be calculated using the Civil Debt Calculator) on the outstanding monies due to Ms Wilson from 16 January 2024, until the amount owed is paid in full; and
- c. \$71.55 reimbursement of the filing fee.

Costs

[26] Ms Wilson has applied for costs on this application. Generally the Authority takes a tariff-based approach, and does not award costs on costs. On balance, given that this matter has been dealt with on the papers, and involved only a narrow range of claims, I consider that costs should lie where they fall. No further orders are made.