

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 217
3097614

BETWEEN LEYI YANG
 Applicant

AND DIANE ELECTRONICS
 LIMITED
 Respondent

Member of Authority: Jenni-Maree Trotman

Representatives: Rachel Reece, advocate for the applicant
 Dimitry Mochalkin, representative for the respondent

Investigation Meeting: 29 May 2020 by telephone

Date of Determination: 2 June 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Leyi Yang and Diane Electronics Limited entered into a record of settlement on 21 February 2020. Pursuant to that agreement, Diane Electronics agreed to make various payments to Ms Yang.

[2] Ms Yang alleges Diane Electronics has breached the record of settlement by failing to make payment of the amount agreed other than one payment of \$300. She applies for a compliance order pursuant to sections 137 and 151 of the Employment Relations Act 2000 (the Act).

The Authority's process

[3] Prior to the investigation meeting a minute setting out, inter alia, the date of the investigation meeting was served on Diane Electronics. In addition, it was served with the notice of investigation meeting.

[4] As the Authority had not received a Statement in Reply from the Company, the minute advised that pursuant to Regulation 8(3) of the Employment Relations Authority Regulations 2000, Diane Electronics would require the leave of the Authority to reply or respond to Ms Yang's application. It was advised that if an application for leave was filed this must explain the delay in filing the Statement in Reply on time and file a copy of the proposed Statement in Reply.

[5] No application for leave was received from Diane Electronics and no Statement in Reply was received. However, an appearance was made at the Authority's investigation meeting by Diane Electronics' Accountant, Dimitry Mochalkin. Leave was granted to Mr Mochalkin to provide evidence on behalf of the Company.

[6] As permitted by 174E of 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 but has not recorded all evidence and submissions received.

The Issues

[7] The issues identified for investigation and determination are:

- a. Did Diane Electronics breach the record of settlement by failing to make payment of the agreed amounts?
- b. If so, should a compliance order be made?
- c. Should either party contribute towards the costs of representation of the other party?

Issue one: Breach of the record of settlement

[8] The record of settlement executed by the parties complied with the requirements of s 149 of the Act.

[9] The relevant terms of the record of settlement were these:

2. Diane Electronics will pay Leyi outstanding wages of \$1,323.68 less PAYE for the period 30 October 2019 until 12 November 2019 within seven working days of the date of this agreement.
3. Diane Electronics shall, without admission of liability, pay Leyi, on 31 March 2020, the sum of \$200 in terms of the provisions of s 123(1)(c)(i)

of the Employment Relations Act 2000. This amount will be paid by way of direct credit into Leyi's bank account.

[10] Aside from one payment of \$300 that was made by Diane Electronics to Ms Yang on or about 23 March 2020, Diane Electronics has failed to pay the remaining outstanding amount (\$1,223.68 less PAYE). It concedes this amount is due and payable.

[11] I am satisfied Diane Electronics has breached Clause 2 of the record of settlement by failing to pay the total amount agreed under that provision by the due date.

Issue two: Compliance order

[12] I consider it appropriate to exercise my discretion and make a compliance order.¹ A compliance order is necessary to prevent further non-observance of, or non-compliance with, Clause 2 of the record of settlement. There was insufficient evidence to support a finding that the financial position of the Company required payment by instalments.²

[13] Diane Electronics is ordered to comply with the record of settlement by paying Ms Yang the sum of \$1,223.68 less PAYE due pursuant to Clause 2 of the record of settlement. This must be done within 14 days of the date of this determination.

[14] For the information of Diane Electronics, a 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 Ms Yang to the Employment Court for enforcement of the order. Under s 140 of the Act, where the Court is satisfied that any person has failed to comply with a compliance order made under s 137, the Court may order remedies, including term of imprisonment not exceeding 3 months, and/or 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.

Issue three: Costs

¹ Employment Relations Act, s 137(2) and 138.

² Employment Relations Act, s 138(4A).

[15] Ms Yang was represented by the Citizens Advice Bureau and did not incur legal costs. However, she claims for the Authority's filing fee of \$71.56. This fee is an amount reasonably recoverable from Diane Electronics.

[16] I order Diane Electronics to pay the sum of \$71.56 to Ms Yang within 14 days of the date of this determination.

Outcome

[17] I confirm the oral preliminary indication of findings that I provided to the parties.

[18] The overall outcome that I have reached is :

- a. Diane Electronics Limited breached Clause 2 of the record of settlement dated 21 February 2020.
- b. Diane Electronics Limited is ordered to comply with the Record of Settlement by paying Leyi Yang the sum of \$1,223.68 less PAYE due pursuant to Clause 2 of the record of settlement. This must be done within 14 days of the date of this determination.
- c. Diane Electronics Limited is ordered to pay Leyi Yang disbursements in the sum of \$71.56 within 14 days of the date of this determination.

Jenni-Maree Trotman
Member of the Employment Relations Authority