IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2025] NZERA 648
3366003

	BETWEEN	ALLIANCE GROUP LIMITED Applicant
	AND	GRANT INGHAM Respondent

Member of Authority:	Antoinette Baker
Representatives:	Shaun Brookes, counsel for the applicant Andrew McInnes, counsel for the respondent
Investigation meeting:	17 June 2025, 14 July 2025
Submissions:	14 July 2025
Date:	15 October 2025

DETERMINATION OF THE AUTHORITY

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[1] Mr Ingham's employment as a senior financial officer with Alliance Group Limited (Alliance) was agreed to end on terms contained in a confidential Record of Settlement (ROS) under s 149 of the Employment Relations Act 2000 (the Act). The ROS was signed as a full and final settlement by the parties and certified by an authorised mediator in June 2024. The parties then ended the employment on 29 July 2024 which was earlier than the 30 September 2024 termination date stated in the ROS. This was due to circumstances that after failing to resolve matters between them have brought them to the Authority where they each claim the other has breached the ROS in different ways and seek remedies.

[2] Mr Ingham's claim was first in time. He sought compliance with the ROS to have two lump sum payments due to him within seven days of termination paid to him by Alliance together with a penalty for the breach. Alliance has not paid these sums on the basis of a 'set off' with alleged breaches of Mr Ingham's obligations related to him commencing employment with a competitor during the paid 'Garden Leave'; and accessing and moving digital files during the same period for what Alliance considered was no good reason associated with his employment duties drawing a 'strong inference' that he intended to use or disclose the material in his new employment.

[3] I have determined Mr Ingham's claim (the claim determination) separately but also released today.[1] The reason for two proceedings and determinations is explained below. The claim determination outcome is to order Alliance to comply and pay Mr Ingham the two lump sum payments with interest and to pay a penalty for breach of the ROS under s149(4) with half to be paid to Mr Ingham. I declined to accept Alliance could 'set off' those payments for reasons outlined in the claim determination and particularly focused on Alliance's self-help enforcement approach to justify the nonpayment, and the need for certainty the ROS mechanism being in the public interest.

[4] In this claim that I will call the 'counterclaim', Alliance seeks to have the Authority consider Mr Ingham's breaches and award penalties to be paid to Alliance. It seeks a compliance order that Mr Ingham comply with the ongoing duty of confidentiality in relation to the disclosure of Alliance's confidential information. An earlier claim for damages yet to be quantified did not progress.

[5] Mr Ingham has responded to Alliance's claims by saying he made a mistake or did not realise that he could not commence work during his 'Garden Leave' for a new employer who was Alliance's competitor. When pointed out he apologised and agreed to waive the remaining two months of paid garden leave bringing an end to his employment two months earlier than the stated termination date in the ROS. Mr Ingham denies accessing digital material during the garden leave for purposes other than for handover duties or that he did access files to have something to do and because he liked 'deep diving into data'. He includes that he had no

[1] *Ingham v Alliance Group Limited* [2025] NZERA 647

intention of disclosing Alliance information to his new employer, has not done so and notes that he offered to undertake not to do so when the matter was first raised.

[6] To Alliance's further claim that Mr Ingham breached the ROS by disclosing the circumstances leading to entering the ROS in these proceedings, Mr Ingham says this was relevant context, he followed advice or that the information was only provided to the Authority. Mr Ingham says if the Authority orders a penalty for any breaches they should be at the lower end.

The Authority's Investigation

[7] Mr Ingham lodged his claim for breach of the ROS first in time. It was responded to by Alliance as per the above 'set off' defence with further positive claims in the statement in reply seeking remedies for breaches of the ROS against Mr Ingham relating to an obligation restraining from working for a new employer during and for a period of time after the end of his employment with Alliance; for accessing and shifting digital files before the end of the employment with Alliance allegedly for not good reason and creating the 'strong inference' he was taking information to disclose to his new employer in breach of confidentiality obligations; for disclosing information about the circumstances leading to the entering of the ROS.

[8] I held a phone conference call with counsel. I directed that Alliance lodge separate proceedings for what was more than a 'set off' defence to Mr Ingham's claim. It was a claim that Mr Ingham had in turn breached other parts of the ROS with links through to duties of his employment and sought various remedies including damages and penalties. My directions to the parties[2] explained that the enforcement available under the Act to a party to a ROS is only by way of an 'application' for a compliance order under s 137 of the Act that is started with 'commencement of proceedings.' The latter is defined as being done by lodging with an Authority Officer an 'application' that includes a 'statement of problem' accompanied by the prescribed fee.[3] Penalty applications also require 'commencement of proceedings' and are

[2] Directions of the Authority (3331720) dated 5 March 2025 at [5].
[3] Employment Relations Authority Regulations 2000, clauses 5,6,8.

linked from this date to assess the strict 12 month statutory timeframe to bring penalty applications.[4]

[9] Alliance duly lodged a separate claim (this counterclaim) and this was responded to. I indicated I would hold an investigation meeting to hear both claims given the same sequence of events applied to both.

[10] As directed, statements of evidence were exchanged and received by the Authority from Mr Ingham and for Alliance, Mr Ken Smith, in-house counsel; Ms Jessica Lodwidge, human resources; and Mr Christopher Bulovic, head of technology operations.

[11] I held an in person investigation meeting. Under oath or affirmation, I asked questions of the witnesses. Counsel had the opportunity to do the same. I heard oral submissions based on written submissions on a further date after the investigation meeting. I then reserved my determinations.

[12] This Determination is released at the same time as my Determination for the claim.[5]

[13] As permitted by s 174E of the Act, this determination has stated findings and expressed conclusions as necessary to dispose of this matter. It has not recorded all evidence and submissions received.

Challenging a ROS

[14] ROS terms when breached are enforced by:

a. seeking compliance under s 137 (1)(a)(iii) of the Act to rectify the terms of the ROS breached which may include ongoing compliance orders;

b. by seeking penalties for breach of a ROS under s 149(4) of the Act being a sanction paid to the Crown in the first instance and not primarily a compensatory payment to the applicant. Under s136(1) of the Act a penalty must be paid to the Authority and not to the

[4] See above clauses 5 and 6; Employment Relations Act 2000, s135,(5).
[5] See above at note 1.

plaintiff. Under s149(2) of the Act the Authority may order that the whole or part of the penalty recovered be paid to any person.

[15] To the extent that penalties have been sought by Alliance for breaches of sections of the Act other than s149(4) for breach of a ROS, I am not satisfied these are available for consideration as separate penalties. The parties reached a ROS binding them to terms relating to the way Mr Ingham's employment would come to an end. My consideration then is for the penalties available under s 149(4) of the Act for breach of the ROS against those terms albeit they may include a consideration of linked terms in the IEA.

Issues

[16] The issues for investigation and determination are:

(a) Has Mr Ingham breached the ROS by commencing work for a new employer one month into a three month period of paid 'Garden Leave' under terms recorded in the ROS?

(b) If so, is a penalty to be awarded against Mr Ingham, and at what level, and should any part or all be paid to Alliance?

(c) Has Mr Ingham breached the ROS by his actions in relation to interacting with Alliance's digital during the paid 'Garden Leave'?

(d) If so, is a penalty to be awarded against Mr Ingham, and at what level, and should any part or all be paid to Alliance?

(e) If so, should Mr Ingham be ordered to comply ongoing with a duty of confidentiality?

(f) Has Mr Ingham breached the ROS to keep confidential the circumstances leading to entering the ROS based on material in his evidence lodged in these proceedings?

(g) If so, is a penalty to be awarded against Mr Ingham, and at what level, and should any part or all be paid to Alliance?

(i) What if any costs are to be awarded one to the other?

Has Mr Ingham breached the ROS by commencing work for a new employer one month into a three month period of paid 'Garden Leave' under terms recorded in the ROS?

The applicable term(s) of the ROS?

[17] The ROS included:

> Clause 5. From 27 June [the date coming at the end of one week agreed in the ROS to be worked in the workplace] until the Termination Date, the parties have agreed that the Employee will be on Garden Leave, with no requirement to attend work. The Employee agrees that up to and including the Termination Date, while on Garden Leave, they will remain available to be contacted by the Chief Financial Officer and Group Financial Controller to assist with any handover activities. [AND] will retain his company laptop and mobile phone for this purpose.'
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> Clause 6. During the period of Garden Leave the Employee will continue to receive full pay and benefits in the normal manner and will remain bound by the obligation and restrictions outlined in their employment contract.

[18] Clause 6 above references then that Mr Ingham had 'obligations and restrictions' in his IEA that he agreed to continue to be bound by until the end of his employment which was to be after the three months of Garden Leave. I set out below then what I understand are the 'obligations and restrictions' relating to Mr Ingham's action in commencing employment with its competitor during the garden leave.

[19] The IEA included the following 'obligations and restrictions':

> Clause 2.3 You will during your employment: … d) devote yourself exclusively to the discharge of your duties at all times as your services may be reasonable required by the company.
>
> …
>
> Clause 13 [set out as relevant] You shall not, during the term of your employment, and for a period of 3 months from the date of termination of employment for any reason, directly or indirectly …as an employee … … become involved directly or indirectly, with the Restraint Location, with any person, organisation, business, or entity of any kind, which competes, or has the potential to compete, with the business of the Company

> [Alliance] in the meat industry in New Zealand, or assist such person, organisation, business or entity of any kind, without the express consent of the Company. "Restraint Location" means the geographical area within which the Company has sold and marketed its goods, being New Zealand.

Was there a breach?

[20] It is not in dispute that Mr Ingham commenced work for the new employer on 29 July 2024 which was a month into his three months garden leave. I find he did not get written consent from Alliance to do this as can be a reasonable interpretation from the restriction he agreed to above in the ROS as linked to his IEA. While Mr Ingham refers to the employer knowing about the new employment I am satisfied based on what is before me that Alliance found out after Mr Ingham commenced the employment. While Mr Ingham says the action was his misunderstanding of the meaning of the ROS terms I will also return to below. The action itself I find constituted a breach of the ROS for which Mr Ingham can be liable to pay a penalty under s 149(4) of the Act.

If so, is a penalty to be awarded against Mr Ingham, and at what level, and should any part or all be paid to Alliance?

[21] The Authority under ss 149(4), 133 and 135 of the Act has the jurisdiction to award a maximum $10,000 penalty against an individual for breaches 'of an agreed term' of a s149 settlement (ROS). Section 136(2) of the Act says the Authority may order the whole or part of any penalty be paid to any person.

[22] Section 133A of the Act sets out that in determining the amount of a penalty I must have regard to 'all relevant factors' including: (a) the object of the Act (b) the nature and extent of the breach (c) whether the breach was intentional, inadvertent, or negligent (d) the nature and extent of any loss or damage suffered by any person or gains made or losses avoided by the person in breach (e) whether the person in breach has taken steps to mitigate the potential adverse effects of the breach (f) the circumstances in which the breach occurred including the vulnerability of the employee (g) whether the person involved in the breach has previously been found by the Authority or the court to have been engaged in similar conduct.

[23] There is also the need to consider deterrence and to award penalties consistent with similar cases. Chief Judge Inglis noted that in relation to breaches of settlement agreements, 'There is a broader public interest in deterring parties from reneging on s 149 settlement agreements, and of underscoring the importance of compliance, however inconvenient that might prove to be.'[6]

Object of the Act

[24] The object of the Act under s3(a)(v) includes the promotion of mediation as a 'primary problem-solving mechanism' over enforcement litigation. I find that Mr Ingham breached what ought to have been a clear duty known to him. I do not find his explanation that he didn't understand that he was bound by a restraint of working for a competitor plausible. Had he communicated constructively with his employer about wanting to obtain further work I find some likelihood this matter would not have been before me. This supports a penalty being awarded at more than a low level given what I find was a certain deliberateness in not disclosing the employment. I find this because Mr Ingham conceded in cross examination that he hoped Alliance would not find out about him gaining the new employment through a recruitment agent. In his oral evidence Mr Ingham also said he thought he could probably get away with obtaining two salaries during his Garden Leave with Alliance.

The nature and extent of the breaches (severity, number and nature of breaches)

[25] I consider this one breach. The time is now well past the restraint period on Mr Ingham employed in the role he commenced back in late July 2024. There is also little before me to find a connection to harm caused to Alliance's business. However as set out above there was a level of deliberateness about not engaging with Alliance about the intention to obtain new employment during what must only have been weeks into the three month Garden Leave. Particularly concerning is Mr Ingham appeared to think he could get away with Alliance paying him as well as his new employer for the next two months. I find more than a low level penalty is appropriate under this factor.

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[6] *Lumsden v Skycity Management Limited* [2017] NZEmpC 30 at [11].

Whether the breach was intentional, inadvertent, or negligent

[26] For the same reasons as above, I find this was not an inadvertent breach and consider a penalty at more than a low level.

The nature and extent of any loss or damage suffered by any person or gains made or losses avoided by the person in breach

[27] As noted above, there little before me to find a connection to harm caused to Alliance's business. I can accept however that Alliance at the time of discovery of the new employment was understandably concerned that a senior employee with high level financial clearance had commenced working while maintaining access to its confidential systems and during a time he was clearly employed by Alliance by agreement in a recently agreed to exit package ROS. I accept as plausible Mr Smith's evidence that there was a considerable level of concern from the directors liaising about addressing the problem for what I accept is a large business operation with likely multiple layers of commercially sensitive information. In other words, at the time, I accept there was real understandable concern that caused unnecessary time and effort to understand. That said, Alliance took matters into its own self-enforcement hands by immediately ceasing Mr Ingham's salary albeit Mr Ingham then agreed to this step. It therefore had two months' less salary to pay from what was agreed under the ROS as its obligation. Mr Ingham also relinquished that salary. He has, on the other hand, been remedied in relation to the lump sums under the ROS that in the claim determination I have ordered are to be paid to him with interest and a part penalty. Weighing this all up I find this factor weighs towards a lower level penalty.

Whether the person in breach has taken steps to mitigate the potential adverse effects of the breach

[28] I find some mitigation occurred. Mr Ingham agreed to waive the final two months of his employment and salary by bringing the termination date forward. However, I accept the submission that his apology given should be considered in the light of his likely deliberate non communication about starting the new employment and some likelihood he at least ought to have known about the linked restraint of trade in his IEA. I find this supports a low level of penalty.

The circumstances in which the breach occurred including the vulnerability of the employee

[29] I have found in my claim determination that I do not consider Mr Ingham was a vulnerable employee. He held a senior skilled position with Alliance. He was familiar with the mechanism of a ROS. He ought to have understood what he signed and agreed to. He has acknowledged he thought he could get away with the new employment without Alliance knowing thereby extracting two salaries. This is not the actions of a vulnerable employee. I find this supports a higher level of penalty given the obligations of good faith and fidelity that Alliance have rightly referenced as implied into the employment relationship.

Whether the person involved in the breach has previously been found by the Authority or the court to have been engaged in similar conduct

[30] I have nothing before me to show that Mr Ingham has previously breached a ROS in similar circumstances. I find this remains a neutral point. I accept the circumstances in this matter and in the counterclaim are unusual.

Ability to pay

[31] I have nothing before me to show that Mr Ingham has an inability to pay a penalty.

Deterrence – consistency with other penalty awards

[32] I find there is a need to award a penalty against Mr Ingham here to send a message of deterrence. I accept the submission for Alliance that there is a level here of an employee who paid scant regard to the important details of the ROS of settlement or at worst has knowingly breached them in relation to commencing further employment when he did.

[33] I have considered the cases put before me in submissions. The matter does not dovetail neatly in comparison. I conclude based on finding above that most factors lean towards more than low level penalty that $7,000.00 is appropriate. In the circumstances of this breach effectively starting what has become a long running dispute and there being little other remedy available to Alliance I order the whole penalty to be paid to Alliance.

Has Mr Ingham breached the ROS by his actions in relation to interacting with Alliance's digital during the paid 'Garden Leave'?

The applicable term of the ROS?

[34] The ROS included:

> '**NON-FINANCIAL OBLIGATIONS OF THE EMPLOYEE'**
>
> Clause 10. In exchange for the Employer agreeing to its non-financial obligations set out below [terms generally relating to how Mr Ingham's resignation would be communicated], the Employee agrees to the following:
>
> **Confidentiality**
>
> The employee affirms that they will abide by their duty of confidentiality together with any other terms expressed in their contract of employment to have effect after termination of employment and will not at any time after the Termination Date use or disclose to any person trade secrets or other confidential information belonging to the Employer other than information which is generally known or easily accessible by the public unless it is so known or accessible because of a breach of their obligations.

[35] The IEA then included the following as 'terms expressed' in the IEA 'to have effect after termination of employment':

> **Clause 15. Confidentiality**
>
> In this agreement Confidential Information means all information which is not in the public domain and which is reasonably regarded by the Company [Alliance] as confidential to it which you become aware of in the course of carrying out your duties under this agreement.
>
> 15.1 You agree that, other than to the extent necessary to carry out your duties under the Agreement or as required by law, you will hold all Confidential Information in confidence and will not without the prior written consent of the Company directly or indirectly at any time during the term of this Agreement or following its termination for any reason (For so long as the information continues to be Confidential information):

a. Use, or permit the use of, any Confidential Information.

b. Disclose, or permit the disclosure of any Confidential Information to any person, firm, company or organisation.

c. Copy or permit the copying of, any material containing Confidential Information for personal use or for use by any other authorised person, firm, company or organisation.

[36] I find based on the above that Mr Ingham has agreed in the ROS to a stated 'duty of confidentiality' and to wording later in clause 10 which says he must not 'use or disclose' confidential information to apply beyond the end of his employment which is described as 'any trade secrets or other confidential information belonging to the employer other than' information in the public domain unless known because of the employee's breach. As well as this, clause 10 references IEA terms that apply in relation to this obligation after the end of the employment. As above, the IEA clause expands considerably on the obligation of what actions are not allowed: both permitting and doing the action of using, disclosing without Alliance's consent, copying (including for personal use) Alliance's confidential information.

Was there a breach?

[37] The evidence from Alliance has included that after it discovered Mr Ingham had commenced employment with a competitor and had retrieved his Alliance laptop it discovered activity on the laptop during the garden leave showing movement within the system of a significant number of files that had been accessed. While this is a broad explanation, I accept that Alliance reasonably drew inference that this was something it could be concerned about in the context of its discovery that Mr Ingham had not only applied for and been interviewed for employment with its competitor but that this occurred around the similar time he was accessing the computer files.

[38] Mr Ingham gave oral evidence, including explanations to my questions, about why he was accessing files and moving them at the time discovered by Alliance. He explained he was at home, that he needed something to do, and that he enjoyed 'deep diving into data'. His early responses were that he needed to access and move files for the purpose of being ready to answer any handover requests as part of the ROS terms during the garden leave. But based on

what is before me those requests for assistance were not numerous and do not support the amount of activity on his computer. While Mr Ingham sought to challenge some examples given by Alliance where multiple files may have downloaded automatically when opening only one (a broad description) I heard plausible evidence from Mr Bulovic. I accept he is in-house for Alliance and has expertise in this area. He produced various spreadsheets showing the activity on Mr Ingham's laptop during the relevant time and highlighted examples. Mr Bulovic took me through his investigation and examples of when files were open for viewing for a significant length of time. He conceded that he did not know exactly what that meant as to what Mr Ingham was doing and his investigation did not explore whether files accessed were transferred, emailed or copied. Mr Bulovic could not confirm to me what the actual content of the files were exactly. He considered however that they were likely confidential information to Alliance.

[39] Alliance says that Mr Ingham in accessing the significant number of files on his computer, moving a good number of them and doing this in large part in the time Mr Ingham would have been applying for and being interviewed for the new employment meant a 'strong inference' could be taken that he intended to share its confidential information with its competitor, the new employer. It is not disputed that this all occurred during the Garden Leave when Mr Ingham remained, as set out above, obligated to confidentiality terms while on full salary. However, those terms in the ROS and then linked to the IEA require an action beyond just looking at files or in Mr Ingham's later explanation, 'deep diving into data' to keep busy. To an extent this was conceded in Mr Smith's evidence at the Investigation meeting when having heard Mr Ingham's evidence he said he didn't then think Mr Ingham was intending to disclose confidential information from Alliance but likely was looking to take away a few templates to use. If Mr Ingham's intent was to have taken material with him to his new employment and disclose this, he denies this adamantly.

[40] Standing back from the above I am not satisfied there has been a breach here. I can understand the red flags that Alliance considered had arisen when it retrieved and looked at activity on Mr Ingham's laptop. However, the evidence before me does not after all this time show anything more beyond Mr Ingham accessing and moving files around. Curious activity

in one view but I find not Mr Ingham's evidence that he was just filling in time and 'deep diving into data' to be completely implausible after hearing from him.

Has Mr Ingham breached the ROS to keep confidential the circumstances leading to entering the ROS based on material in his evidence lodged in these proceedings?

The applicable term of the ROS?

[41] The ROS included that:

> Cl 14 The employee will keep confidential and not disclose the existence or terms of this agreement and the circumstances leading up to the termination of their employment other than in confidence to professional (including medical) advisers, immediate family or as required by law.

[42] Alliance claims that Mr Ingham breached the above when he included in his written evidence some detail as to the lead up to why a ROS was entered into. For the sake of clarity, I have not taken notice of this information in evidence and have no evidence that it has been discussed or disclosed wider than in these proceedings. The material is brief sentences. It is submitted for Mr Ingham that the information gave context. Mr Ingham in his oral evidence was plausible when he said to me he was guided by advice. I find it likely that he had no intention to put forward material in breach of the ROS in his evidence. To this end even if a technical breach I would not consider a penalty.

Should Mr Ingham be ordered to comply ongoing with a duty of confidentiality?

[43] I have not found a breach of confidentiality under the ROS. A compliance order is a serious and specific enforcement tool. That this is the case is illustrated by the Employment Court's power to consider noncompliance if an Authority order is not complied with. Remedies can, at a maximum for an individual, include imprisonment.[7] I decline to order compliance under this head.

Outcome

[44] The application to order compliance with ongoing confidentiality is dismissed.

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[7] Employment Relations Act 2000, s140.

[45] The following orders are made:

a. Grant Ingham has breached the Record of Settlement (ROS) made under s 149 of the Employment Relations Act 2000 which was signed by the parties on 19 June 2024 and certified by an authorised mediator on 24 June 2024. The breach occurred when Grant Ingham breached clauses 5 and 6 of the ROS by commencing employment with a new employer who is a commercial competitor of Alliance Group Limited. The breach of included the linked terms of his employment at clauses 2.3 and 13 of the Individual Employment Agreement of the parties offered and accepted on 22 December 2021.

b. Within 28 days from the date of this determination Grant Ingham is ordered to pay the following penalty for the above breach under s 149(4) of the Employment Relations Act 2000. It is to be paid in full to Alliance under s136(2) of the Employment Relations Act 2000

c. The sum of $7,000.00 as a penalty for breach of the Record of Settlement made under s 149 of the Employment Relations Act signed by the parties on 19 June 2024 and certified by an authorised mediator on 24 June 2024.

Costs

[46] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[47] If the parties are unable to resolve costs, they may revert back to the Authority for assistance with a proposed timetable to provide respective submissions (particularly in the event that costs also may remain unresolved for the claim determination). The parties are asked to communicate if that assistance is required no later than 28 days from the date of this determination. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[48] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual ‘daily tariff’ basis unless circumstances or factors, require an adjustment upwards or downwards.

Antoinette Baker
Member of the Employment Relations Authority