

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2024] NZERA 468  
3253759

BETWEEN BLUE MARINE TRAVEL  
LIMITED  
Applicant

AND LEE HARRIS  
Respondent

Member of Authority: Geoff O'Sullivan

Representatives: Lucy Jenkins, counsel for the Applicant  
Lee Harris in person

Investigation Meeting: 11 April 2024 in Tauranga

Submissions and other Information Received: Up to and including 2 May 2024

Determination: 31 July 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Blue Marine Travel Limited (Blue Marine), seeks orders that Lee Harris complies with:

- (a) Clause 7 and 8 of a settlement agreement entered into by the parties on 4 August 2023 and signed by the parties and a mediator from the Ministry of Business Innovation and Employment in accordance with s 149 of the Employment Relations Act 2000 (the Act) (the agreement);
- (b) Penalties for the above breaches; and
- (c) Penalties for Mr Harris breaches of his employment agreement by:
  - (i) Allowing Blue Marine to be invoiced for cleaning services in respect of Mr Harris home.

- (ii) Mr Harris arranging for the issuing of a Z petrol card to which Mr Harris charged personal fuel, groceries and other sundry items to without the approval of Blue Marine.

[2] Blue Marine also claim a sum of \$14,960.50 in respect of the unauthorised expenditure relating to cleaning, television, return of computer, phone, and use of the Z fuel card.

[3] Mr Harris denies breaches of the settlement agreement and breaches of his employment agreement. He says to the extent there were breaches then they were not deliberate. He says he was happy to pay a proportion of the cleaning costs incurred whilst he was working from home, was happy to return any items belonging to the company and in respect of the mobile phone, he says this was his personal property.

### **The Authority's investigation**

[4] The Authority heard from Mr Lee Baldwin, a director of Blue Marine and from Natasha Nel-Austin who has been employed by Blue Marine since 2019 and who is currently the Communications Manager. Mr Lee Harris gave evidence on his own behalf. All witnesses gave evidence on affirmation.

### **The issues**

[5] The issues requiring investigation and determination were:

- (a) Did Mr Harris breach the settlement agreement?
- (b) Did Mr Harris breach his employment agreement and if so, does Mr Harris owe a sum of \$14,960.50 in respect of expenditure relating to cleaning and use of the Z fuel card?
- (c) Should penalties be imposed for any breaches of the settlement agreement and/or breaches of the employment agreement if indeed such breaches occurred?

### **Background**

[6] Mr Harris was employed by Blue Marine as its Director of Operations and Marine Travel Agent. During his employment, he reported to Mr Baldwin, who is not only the Director of Blue Marine, but also the Managing Director of Blue Marine's parent company in the United Kingdom. The parties had entered into an employment

agreement dated 27 March 2019 which contained a term and condition that where the employee incurred authorised and reasonable work related expenses, these would be reimbursed by Blue Marine on the proviso there was proof of purchase and confirmation the expense had been incurred in carrying out employment duties.

[7] Blue Marine became concerned regarding a number of financial irregularities involving Mr Harris. As a result of this, the parties entered into a s 149 agreement dated 4 August 2023. The agreement provided amongst other things that Blue Marine had commenced a disciplinary process in relation to what were termed, payment irregularities. Of note, clause 6 of the agreement provided:

For the avoidance of doubt the employee will continue to abide by the confidentiality and intellectual property provisions in his employment agreement beyond the termination date.

[8] Clause 7 of the agreement provided:

Within five working days of the date this agreement is signed the employee will return all property of the employer that he has in his possession or control (including any information stored electronically and any passcodes or passwords). Such property includes, but is not limited to, laptops, swipe cards, keys and other materials supplied to the employee or otherwise acquired by the employee in the course of his employment with the employer.

[9] As part of the agreement, Mr Harris resigned from his employment effective 29 September 2023. He was not required to perform any duties for Blue Marine from 4 August 2023.

[10] The agreement also provided that it did not apply to any other financial irregularities committed or alleged to have been committed by Mr Harris that Blue Marine may become aware of after the date of the agreement.

## **Evidence and analysis**

### *Breach of settlement agreement*

[11] The first alleged breach of the settlement agreement was that Mr Harris had made two calls to customers and talked about Blue Marine Travel saying they were for sale and in trouble financially. Apart from breaching confidence Blue Marine saw this as a disparaging statement in terms of clause 8 of the settlement agreement. Blue Marine says that these discussions occurred whilst Mr Harris was still an employee during the notice period.

[12] Mr Harris denied any breaches of confidentiality, saying he did not pass on any confidential information and denied making disparaging statements. During discussions with the parties, Blue Marine accepted that Mr Harris' actions in this regard could be seen more as moral lapses than breaches of confidentiality. It follows therefore there was no evidence before the Authority to support a finding that Mr Harris had breached the settlement agreement in that way.

[13] The settlement agreement also required Mr Harris to return within five working days from the date of the execution of the agreement by him, to return all property of Blue Marine he had in his possession or control. This included computers and in the view of Blue Marine, Mr Harris' phone. The second alleged breach is that Mr Harris did not comply with this provision of the agreement. When the computers were finally returned, they were wiped and reset to factory settings. Information removed from the computers undoubtedly included information Blue Marine was entitled to. Mr Harris confirmed the breaches occurred but argued he was not required to return the phone because it was broken, and in any event it was his.

#### *Epic Cleaning Services invoices*

[14] The settlement agreement signed by the parties carved out any financial irregularities Blue Marine discovered after the parties signed the agreement.

[15] Blue Marine had engaged Epic Cleaning Services to undertake the commercial cleaning of its office premises. Subsequently he became aware that some invoices from Epic, detailed office cleaning alongside the cleaning of Mr Harris' house. On two occasions in October and November 2022, the evidence showed that invoices forwarded to Blue Marine had the reference to Mr Harris' house deleted. Previous invoices had showed itemised house cleaning at Mr Harris' home. It became clear that Mr Harris had arranged for the invoices to be changed so as not to record the cleaning of his house. Mr Harris' explanation as to why this had occurred, was unsatisfactory. However, what was clear and accepted by Mr Harris during the investigation meeting, was that Blue Marine had never agreed to pay for Mr Harris' cleaning. Such a cost fell outside Blue Marine's contractual commitment to reimburse reasonably incurred business expenses. It follows therefore Blue Marine is entitled to be recompensed for this unauthorised expenditure.

*Mobile phone*

[16] Mr Harris' view was that the Galaxy smartphone that Blue Marine wished to be returned, was his phone, and this was the basis on which he had refused to return it. He also said that the phone was no longer functional in any event.

[17] Blue Marine, however, reimbursed Mr Harris for his phone expenses and this included the purchase price of the phone. Accordingly, there is little doubt that the reality was that Blue Marine, through reimbursement of expenses, ultimately paid for the phone. This is evidenced through the invoices provided by the company.<sup>1</sup>

*Use of the Z Energy card*

[18] In essence, Mr Harris accepted misuse of the Z card and indeed his actions in respect of cleaning invoices. During the investigation meeting, Mr Harris attempted in part to move away from the admissions he had made in his email of the 13 November 2023.<sup>2</sup> Amongst other things, Mr Harris apologised, saying he was ashamed of his actions and was sorry for all he had done. Mr Harris explained during the investigation meeting that as a director of the company, he felt he had certain rights which extended far beyond what his employment agreement with Blue Marine provided. This included him obtaining a Z Energy card which he used not only to fill his vehicle, but his wife's. He also used the card to purchase groceries. In an effort to avoid scrutiny of his expenditure on the Z card, Mr Harris led Blue Marine to believe that the charges relating to Z Energy were in fact "electricity charges for the office". He went on to explain to his employer:

The office landlord has changed hands and, as such, we now pay our own electricity, this is who we are with. You will see the rent has come down, as this used to be bundled in together.

[19] Eventually, Blue Marine discovered that Z Energy was not and had never been an electricity company in New Zealand. Mr Harris admitted his deception.

[20] It follows therefore, that all monies Mr Harris charged against the Z Energy card he had obtained, and for which the company paid for, are required to be repaid.

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<sup>1</sup> See Document 5, Bundle of Documents.

<sup>2</sup> Document 16, bundle of Documents.

[21] The only justification that Mr Harris put forward for his actions, was his belief that he was entitled to such perks because he was the director of the company and, having spoken to other company directors with expense accounts, he felt he should have one too.

[22] Blue Marine Travel Limited has established that Mr Harris has been guilty of breaches of the s 149 agreement and breaches of his employment agreement, which fall outside the s 149 agreement. Mr Harris is ordered as follows:

- (a) To return all Blue Marine property which was not returned to Blue Marine, within five working days of the 17 August s 149 agreement. For clarity, this would have included the mobile phone that Mr Harris retained, however he has told me it no longer works and he was uncertain where it was.
- (b) Mr Harris is to reimburse Blue Marine a sum of \$2,075.00 in respect of the payments Blue Marine unknowingly made to Mr Harris in respect of his housecleaning.
- (c) Mr Harris is to compensate Blue Marine a sum of \$12,894.90 resulting from his use of a Z Energy fuel card, to which he charged fuel and groceries to Blue Marine. This is an appropriate case for a penalty to be awarded.

### **Penalties**

[23] Mr Harris has accepted he has breached his employment agreement through his actions in respect of the Epic Cleaning invoices and his use of the Z Energy card. However, in all the circumstances I decline to award a penalty. I note Mr Harris is required to repay Blue Marine Travel Limited in respect of the Epic Cleaning invoices, and also repay Blue Marine in respect of moneys obtained through his misuse of the Z Energy card. Further, if I had been inclined to award a penalty it would have been to the Crown account and I note that Mr Harris may well now be outside the jurisdiction.

[24] In respect of the breach of the agreement, Mr Harris did breach the agreement because he did not return items in a timely manner and did not return the mobile phone at all. When he did return his computers to Blue Marine Travel Limited, they had been wiped and reset to factory settings which caused considerable inconvenience and

distress to Blue Marine. Travel Limited. I consider a penalty warranted and order a penalty of \$1,500.00. The total amount of the penalty is to be paid to Blue Marine.

### **Non-disclosure**

[25] Mr Harris has requested “Any final decision rendered by the Employment Relations Authority in the matter of Blue Marine Travel v Lee Harris be treated as a non-disclosure decision”. He says this is because publication of this information could harm his current employer’s business.

[26] No evidence was put forward first to show that publication would cause the damage claimed and secondly even if it did, why that would be a ground for non-publication under these circumstances. Non-publication was resisted by Blue Marine. As the company noted, non-publication would be a departure from the fundamental principle of open justice. No specific adverse consequences sufficient to justify an exception to the principle of open justice have been advanced and accordingly Mr Harris’ request for non-publication is denied.

### **Costs**

[27] I consider that there is sufficient information before the Authority to order costs in favour of Blue Marine Travel Limited as the successful party. I do not consider that there are grounds to depart from the notional daily tariff adopted by the Authority and accordingly order Mr Lee Harris to pay Blue Marine Travel Limited, the sum of \$4,500.00 as a contribution towards the costs it has occurred in bringing its claim.

Geoff O’Sullivan  
Member of the Employment Relations Authority