

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 337/08
5131834

BETWEEN MARTIN CAINS
 Applicant

AND AAKLAND CHEMICALS
 (AUCKLAND) LIMITED
 Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
 Clare Watkins for Respondent

Investigation Meeting: 26 September 2008

Determination: 26 September 2008

DETERMINATION OF THE AUTHORITY

- A. Aakland Chemicals (Auckland) Limited is ordered to pay Martin Cains, within 14 days of the date of this determination, the balance of the sum due to him under agreed terms of settlement of an employment relationship problem made on 3 April 2008.**
- B. Aakland Chemicals (Auckland) Limited is further ordered to pay Martin Cains the sum of \$70 in reimbursement of his fee for lodging an application for compliance.**

[1] Martin Cains applied for orders from the Authority to enforce the terms of an agreement signed by the parties on 3 April 2008.

[2] The agreement recorded settlement of an employment relationship problem and was made with the assistance of a Department of Labour mediator.

[3] The mediator certified the parties' record of settlement under s149 of the Employment Relations Act 2000 ("the Act"). Her certificate establishes the parties had confirmed they understood the terms of settlement were final and binding and not open to further action, appeal or review, except for enforcement purposes.

[4] Mr Cains' evidence was that Aakland Chemicals (Auckland) Limited made three of six payments by instalment as agreed. It refused to pay the remaining instalments.

[5] Aakland's director Robert Green told me that on the day that the settlement agreement was made he relied on figures prepared by his wife, Catherine Green, who is a shareholder in the company and handles the payroll side of the business. Those figures did not include two weeks wages that had been paid to Mr Cains as redundancy pay last year.

[6] Having later identified that omission, Aakland deducted that amount from the settlement sum agreed on 3 April 2008 and considered no further payment was due.

[7] Aakland is not entitled to rely on its settlement agreement on that basis. It was in possession of all Mr Cains pay information prior to the mediation meeting and was in a position to avoid the alleged miscalculation of sums owed to Mr Cains.

[8] Under s137 and s151 of the Act orders are made requiring Aakland to comply with the agreement made and to pay Mr Cains the balance of the sum owed to him within 14 days of the date of this determination. The balance comprises half of the amount agreed (less any applicable PAYE). I have not identified the amount as another term of the agreement was that its terms would remain confidential.

[9] Mr Cains is also entitled to reimbursement of the fee paid to the Authority for lodging his application.

Robin Arthur
Member of the Employment Relations Authority