

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2021] NZERA 141
3125874

BETWEEN BONNIE CAMERON
Applicant

A N D KAI KITCHEN LIMITED
Respondent

Member of Authority: Peter van Keulen

Representatives: Paul Mathews, advocate for the Applicant
Lois Vallance for the Respondent

Investigation Meeting: 22 March 2021

Submissions Received: 22 March 2021 and 1 April 2021 for the Applicant
22 March 2021 for the Respondent

Date of Determination: 12 April 2021

DETERMINATION OF THE AUTHORITY

- A. Kai Kitchen Ltd has breached the record of settlement dated 29 October 2020 between it and Bonnie Cameron as it failed to make the regular payments set out.**
- B. As a result of the default above, the balance of the money payable to Ms Cameron is now due and owing and Kai Kitchen must comply with the record of settlement by paying \$8,825.00 immediately.**
- C. Kai Kitchen must pay Ms Cameron \$550.00 as a contribution to her legal costs and \$71.56 for the filing fee in this matter.**

Employment relationship problem

[1] Bonnie Cameron and Kai Kitchen Ltd signed a record of settlement on 29 October 2020. A mediator from the Mediation Services of the Ministry of Business Innovation and Employment signed the record of settlement, pursuant to s 149 of the Employment Relations Act 2000 (the “Act”).

[2] Ms Cameron says that Kai Kitchen has not complied with clause 2 and clause 3 of the Record of Settlement relating to regular payments to be made to her.

[3] Ms Cameron seeks a compliance order and costs for the breaches by Kai Kitchen.

Background facts

[4] Ms Cameron and Kai Kitchen had an employment relationship problem which they resolved through mediation on 29 October 2020. The parties reached an agreement in full and final settlement, which was recorded in the Record of Settlement.

[5] The operative clauses of the Record of Settlement provide for payments to be made in regular instalments until the agreed total is paid.

[6] Clause 4 of the Record of Settlement provides that if Kai Kitchen fails to make any of the regular payments then the full balance of the agreed total becomes due and payable immediately.

[7] Kai Kitchen has failed to make the regular payments set out in the Record of Settlement. It has made a number of payments and some of these were made regularly. The total amount paid up to my investigation meeting was \$2,700.00.

[8] However as the payments had not been made regularly and because Ms Cameron has no confidence that payments will continue she has sought a compliance order based on clause 4 of the Record of Settlement.

[9] Kai Kitchen says it has budgetary constraints and various other issues which has impacted on its turnover and cash flow but it is committed to making regular payments.

[10] Kai Kitchen sought to agree a new schedule of payments with Ms Cameron, including after my investigation meeting when discussions were held. However the parties have been

unable to reach agreement and Ms Cameron seeks for the total balance owed to be paid now pursuant to clause 4 of the record of settlement

Has Kai Kitchen breached the record of settlement?

[11] Kai Kitchen has breached the Record of Settlement by not making the regular payments as set out.

Is it appropriate to make a compliance order?

[12] As Kai Kitchen has breached the Record of Settlement a compliance order is necessary. I will make an order for compliance pursuant to s 137(2) of the Act.

[13] The effect of the breach by Kai Kitchen is that the balance of the amount payable becomes due and payable immediately.

[14] So, my order is that Kai Kitchen must comply with the Record of Settlement by paying Ms Cameron the amount outstanding in terms of the agreed payments set out at clauses 2 and 3 of the Record of Settlement. As at 22 March 2021 this was \$8,825.00.

Costs

[15] Ms Cameron's advocate seeks costs for the application for compliance. I am satisfied that an award of costs is appropriate and given the circumstances I set that at \$550.00.

[16] Kai Kitchen must also pay \$71.56 for the filing fee on the statement of problem.

Orders

[17] Kai Kitchen Ltd has breached the Record of Settlement as it failed to make the regular payments set out.

[18] As a result of the default above, the balance of the money payable to Ms Cameron is now due and owing and Kai Kitchen must comply with clause 4 of the Record of Settlement by paying \$8,825.00 immediately.

[19] Kai Kitchen must pay Ms Cameron \$550.00 as a contribution to her legal costs and \$71.56 for the filing fee in this matter.

Peter van Keulen
Member of the Employment Relations Authority