

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** Travers Neil Carr (Applicant)  
**AND** Nathan Jean Seator (Respondent)  
**REPRESENTATIVES** Travers Neil Carr in person  
No appearance by or for Respondent  
**MEMBER OF AUTHORITY** G J Wood  
**INVESTIGATION** 12 April 2006  
**MEETING**  
**DATE OF** 13 April 2006  
**DETERMINATION**

**DETERMINATION OF THE AUTHORITY**

1. This matter has a troubled history. Nathan Seator employed Travers Carr as an apprentice, but at the termination of the employment agreement Mr Carr claimed that he was still owed wages and holiday pay. He filed a recovery claim in the Authority accordingly. The matter was referred to mediation and settlement was reached on 31 October 2005.
2. Mr Carr had to seek a compliance order with the settlement, however, as its terms were not complied with. Mr Seator did not appear at that investigation meeting. My colleague, Ms Monaghan, ordered that Mr Seator pay Mr Carr the sum of \$1,500 immediately, and that Mr Seator was to commence on 26 December 2005 making the remainder of the weekly payments owed to Mr Carr and to continue thereafter to make weekly payments of \$250 as per the mediated settlement. Mr Seator was further ordered to pay costs of \$70.
3. Mr Carr still has not received any money from the mediated settlement, despite the orders of the Authority. He has taken enforcement proceedings in the District Court accordingly.

4. In this application, Mr Carr claims penalties against Mr Seator for breach of the mediated settlement (pursuant to s.149 (4) of the Act) and that the penalties be paid to him.
5. Mr Seator did not attend this investigation meeting either. I am satisfied, however, that he was served with notice of the investigation meeting, from the evidence of Ms Deanna Walzl. She told the Authority that she had personally served Mr Seator with a copy of the employment relationship problem (Mr Seator did not file a statement in reply) and also (later) notice of the investigation meeting. Following that service, an Authority support officer spoke to Mr Seator and was advised by him that he was aware of the investigation meeting. He was reminded again by the Authority support officer of the time and date of the meeting.
6. Mr Seator did not attend the meeting. An attempt was made by the Authority support officers to contact Mr Seator on the phone number he had given, but there was no reply. A message was left for him indicating that the Authority would proceed with the matter in his absence if he did not attend forthwith. I delayed the commencement of the investigation meeting to see if Mr Seator would attend, but he did not.
7. I therefore determined to act as fully in the matter as if Mr Seator had attended or been represented, because no good cause was shown for his failure to attend.
8. It is clear from the evidence of Mr Carr that Mr Seator has, subsequent to the issuing of Authority's orders on 15 December 2005, breached not only the terms of the mediated settlement, but also the Authority's orders. Furthermore, Mr Carr has still not been paid any of the sums owing to him. There have therefore been clear breaches of the mediated settlement that warrant the imposition of a penalty.
9. Normally, for reasons of public policy and in the interests of justice, penalties are awarded to the Crown. I am satisfied in this case, however, that Mr Carr ought to be paid one half of any penalty awarded. I do so for the following reasons:
  - the mediated settlement constituted settlement at what both parties considered to be fair at the time. It is quite unfair for one party, Mr Seator, to subsequently resile from such an agreement;

- the impact of this failure to pay moneys owed to Mr Carr has been that he has had to borrow money from his parents; and
  - Mr Carr has had to take time off work to pursue payment.
10. I accept Ms Walzl's evidence that Mr Seator is employed as a subcontractor to Midway Carpets & Vinyls Ltd in Palmerston North and that he employs two staff in this enterprise. There therefore appears to be no reason why Mr Seator would be unable to pay any penalty awarded.
  11. In all the circumstances of this case I consider that Mr Seator's apparent flagrant breach of the mediated settlement means that a penalty of \$600 should be awarded against him.
  12. I therefore order Nathan Seator to pay \$600 as a penalty for breach of agreed terms of settlement, pursuant to s.149(4). \$300 of this sum is to be paid to the Crown and \$300 to Travers Carr.
  13. Mr Carr has had to meet a number of additional expenses as a result of having to bring this claim before the Authority, for which he should be reimbursed, including the filing fee and travel, photocopying and telephone expenses.
  14. I therefore also order Nathan Seator to pay Travers Carr the sum of \$200 in expenses.

**G J Wood**  
**Member of Employment Relations Authority**