

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2021] NZERA 126
3083137

BETWEEN ANGIE CARTER
Applicant

AND MARK ANDERSON
Respondent

Member of Authority: Helen Doyle

Representatives: Roland Ingram advocate for the Applicant
Mark Anderson in person

Submissions Received: 19 March 2021 from the Applicant
No submissions from the Respondent

Date of Determination: 1 April 2021

DETERMINATION OF THE AUTHORITY

- A The parties did not enter into a full and final settlement under s 149 of the Employment Relations Act 2000.**
- B The Authority cannot order compliance.**
- B Angie Carter may lodge an amended statement of problem if she wishes to pursue the grievances she raised.**
- C Costs are reserved.**

Employment Relationship Problem

[1] Angie Carter lodged an employment relationship problem with the Authority. In the statement of problem she said that Mark Anderson had not complied with a Record of

Settlement under s 149 of the Employment Relations Act 2000 (the Act) dated 11 November 2019.

[2] Mr Anderson has been largely uncommunicative with the Authority. He has not lodged a statement in reply and he did not answer his phone for a telephone conference with the Authority on 5 March 2021. I am satisfied from the administrative file that he was advised of the date and time of the telephone conference.

[3] During the telephone conference with the Authority which Mr Ingram attended, the Authority referred to an issue as to whether or not there was an enforceable settlement. It was agreed that the Authority would investigate and determine that matter.

[4] In a notice of direction dated 5 March 2021 the Authority timetabled for submissions to be lodged and served by both Mr Ingram and Mr Anderson by no later than 5.00 pm on 19 March 2021. It also asked Mr Ingram to supply the letter raising the personal grievance by that same date.

[5] I am satisfied that the notice of direction was served on Mr Anderson however he did not provide submissions to the Authority by the required time. Mr Ingram provided submissions on behalf of Ms Carter.

[6] The Authority needs to determine the following issues in this matter:

- (a) Was there a full and final settlement of the dispute between the parties?
- (b) If not can the applicant proceed with her grievances?

Was there a full and final settlement of the dispute between the parties?

[7] The parties attended phone mediation.

[8] I find that it is more likely that having attended phone mediation with a mediator employed by the Chief Executive of the Ministry of Business, Innovation and Employment the parties intended to use the process in s 149 of the Act. Consistent with that there was a written record of settlement prepared to be signed by both parties and then certified by the mediator expressed to be a record of settlement under s 149 of the Act.

[9] As it transpired the written record of settlement was only signed by Mr Ingram on behalf of Ms Carter. Mr Anderson did not sign the record of settlement. The mediator did not sign the agreement certifying that she had explained the effect of s149 (3) of the Act and that the parties had affirmed their requests to her to sign.

[10] It is likely there were preliminary discussions resulting in some formalisation about the settlement but the process under s 149 was not completed as the parties intended it would be before they were bound.

[11] In those circumstances I do not find that there was a full and final settlement under s 149 of matters arising out of the employment relationship with which the Authority could order compliance.

Further steps

[12] Mr Ingram has attached to his submissions a copy of the letter raising the grievance with Mr Anderson dated 25 February 2019.

[13] In that letter he raises grievances of unjustified disadvantage about a warning given on 17 January 2019 and unjustified dismissal on 18 January 2019.

[14] The shape of the employment relationship problem has changed. Ms Carter is not bound by a full and final settlement with Mr Anderson which means she can pursue her grievances if she wishes.

[15] If the grievances are to be pursued Mr Ingram should lodge an amended statement of problem. Mr Anderson will have 14 days from service on him of the amended statement of problem to lodge a statement in reply. The Authority will hold a telephone conference with a view to setting the matter down for an investigation meeting shortly thereafter.

Costs

[16] I reserve the issue of costs.

Helen Doyle
Member of the Employment Relations Authority