

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2013] NZERA Auckland 181
5408259**

BETWEEN TERESSA CHERRINGTON
 Applicant

AND MERCURY BAY FUNERAL
 SERVICES LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in Person
 Ray Bestwick, Advocate for Respondent

Investigation Meeting: 9 May 2013 at Hamilton

Determination: 10 May 2013

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 3 December 2012 a Record of Settlement (the Settlement) was signed under s 149 of the Employment Relations Act 2000 (the Act). The parties to the Settlement were the Applicant, Ms Teresa Cherrington, and the Respondent, Mercury Bay Funeral Services Limited (Mercury) The Settlement was signed by Ms Cherrington and Mr Ray Bestwick, sole director of Mercury. The Record was also signed by a Mediator employed by the Ministry of Business, Innovation and Employment.

[2] The issue which had been brought before the Authority by Ms Cherrington is that Mercury had not complied fully with clauses 4 and 5 of the Settlement, which state:

4. The employer shall pay to the employee the sum of \$3500.00 as compensation under section 123(1)(c)(i) of the Employment Relations Act 2000. The said payment will be made by way of three instalments.

5. The first instalment of \$1250.00 is to be made on or before 15 December 2012. The second instalment of \$1250.00 is to be made on

or before 15 January 2013. The third and final instalment of \$1000.00 is to be made on or before 15 February 2013.

[3] The Settlement was certified under s 149 of the Act by the Mediator. That certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms:

- a. were final, binding and enforceable; and
- b. could not be cancelled; and
- c. could not be brought before the Authority or the court for review or appeal, except for the purposes of enforcing those terms.

[4] Mr Bestwick said that Mercury had complied with the Settlement by paying the first instalment of the amount agreed in accordance with clauses 4 and 5 of the Settlement; however he had suspended payment of the second and third payments.

[5] Mr Bestwick explained he had suspended further payments to Ms Cherrington on the basis that she had breached clause 1 of the Settlement which stated:

1. *These terms of settlement and all matters discussed at mediation shall remain, as far as the law allows confidential to the parties.*

[6] Mr Bestwick said that he had become aware that Ms Cherrington had disclosed the details of the Settlement with Mr Bruce Jack, an ex-employee of Mercury, who had made the details known to an employee of Mercury, Mr Glenn Rogers.

Background Facts

[7] Mr Rogers said that he had met with Mr Jack, an ex-colleague on 24 December 2012, and had been informed by Mr Jack that Ms Cherrington had received a large amount of money as the result of mediation, that Mr Rogers would receive little time off work during his employment with Mr and Mrs Bestwick, and that they did not pay their bills.

[8] Mr Rogers also said that Mr Jack had informed him that leases were not being paid by Mercury and that this could impact on Mr Rogers who lived in Mercury leased premises.

[9] Mr Bestwick said he had believed, from the details of the conversation between Mr Jack and Mr Rogers as reported to Mrs Bestwick by Mr Rogers, that Ms Cherrington had breached the Settlement by disclosing details discussed during the mediation. However Mr Bestwick had agreed when questioned that leases had not been discussed during the mediation process, and that in fact it had not been true that these had not been paid by Mercury.

[10] Ms Cherrington said that following the raising of a personal grievance with Mercury, she had received support from Mr Jack. Although Mr Jack had not accompanied her to the mediation, Ms Cherrington said she had contacted him after it and had told him that it had been resolved, which wording she had clarified as being acceptable with the Mediator.

[11] Ms Cherrington said she had been asked by Mr Jack if she had been happy with the outcome and she had confirmed that she had been, but she had disclosed no specifics about what had been discussed during the mediation, or that any financial payment had been agreed.

[12] Mr Jack said he had made an assumption based on what Ms Cherrington had told him that she had received a financial payment, however confirmed that Ms Cherrington had not informed him that she had received a financial payment from Mercury.

[13] Mr Jack, who had previously been employed in a position of some responsibility with Mercury, further confirmed that the statements he had made to Mr Rogers regarding the financial position of Mercury had been purely based on his own experience and not on anything which Ms Cherrington had disclosed to him as having been discussed at mediation.

Determination

[14] From the evidence available to the Authority, I am satisfied that Ms Cherrington had not breached clause 1 of the Settlement, however I find that Mercury has failed to comply with clauses 4 and 5 of the Settlement.

[15] In order to effect compliance with clauses 4 and 5 of the Settlement, I therefore order Mercury to pay Ms Cherrington, no later than 14 days from the date of this determination, the outstanding sum of \$2,250.00.

Costs

[16] As Ms Cherrington was not legally represented, there is no order for costs.

[17] I order that Ms Cherrington be reimbursed for the Authority's filing fee by Mercury in the sum of \$71.56.

Eleanor Robinson
Member of the Employment Relations Authority