

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 627  
3386244

BETWEEN	COVERSTAFF RECRUITMENT LIMITED Applicant
AND	ANDREW BYRNE Respondent

Member of Authority:	Robin Arthur
Representatives:	Robin Harrington, counsel for the Applicant Respondent in person
Investigation:	By telephone conference on 22 September 2025 and on the papers
Determination:	7 October 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Coverstaff Recruitment Limited (CRL) applied for a compliance order and other orders relating to the terms of a settlement agreement made with Andrew Byrne and certified, on 2 April 2025, by an Employment Mediation Services mediator.

[2] The parties' agreement said Mr Byrne would pay \$22,890 to settle a debt for a larger amount owing under four determinations of the Authority and the Employment Court.<sup>1</sup> Mr Byrne agreed to pay this amount in four instalments, starting with one payment on 16 April 2025 and three further payments in May, June and July. He has not paid any of the instalments.

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<sup>1</sup> *Byrne v Coverstaff Recruitment Limited* [2023] NZERA 549 (25 September 2023, penalty of \$25,000); *Byrne v Coverstaff Recruitment Limited* [2023] NZERA 623 (25 October 2023, costs of \$4,500); *Byrne v Coverstaff Recruitment Limited* [2024] NZEmpC 197 (10 October 2025, costs of \$2,390) and *Byrne v Coverstaff Recruitment Limited* [2025] NZEmpC 1 (15 January 2025, costs of \$1,000).

[3] In his statement in reply to CRL's application Mr Byrne said genuine financial hardship had significantly affected his ability to meet the agreed terms. He said he was willing to pay but wanted a further scheme of instalments to be set for payment over an unspecified period.

### **Authority investigation**

[4] At a case management conference held by telephone on 22 September 2025 the parties agreed this matter would be determined on the papers. Mr Byrne was given until 29 September to advise if he had arranged or made payment of the due amount or to provide, in writing, further information about his income and assets and any measures he has undertaken to raise the funds due.

[5] By email on 30 September Mr Bryne acknowledged he was liable to pay \$22,890 and set out an account of his weekly income and expenditure. His account left a balance of \$200 a week. He said attempts to raise the money by a loan from a financial institution, friends or family were not successful. He gave no proposed amount he could pay by instalments but asked the Authority to take his circumstances into account when considering CRL's application.

[6] CRL was given an opportunity to provide further information or comment by 6 October and did so through an affidavit of its chief operating officer Roana Carran.

### **Issues**

[7] Against that background, the following issues arose for determination of the requests in CRL's application for a compliance order, an order for interest on the amount due, a penalty breach of the settlement agreement and an order of costs for this application:

- (i) Should any compliance order made allow for payment of the due amount by instalments?
- (ii) Should an order for interest be made?
- (iii) Should Mr Byrne be ordered to pay a penalty for breach of a settlement agreement certified under s 149 of the Employment Relations Act 2000 (the Act)?
- (iv) If any penalty was ordered, should it be paid to the Crown or CRL?
- (v) Should Mr Byrne be ordered to pay CRL costs on this application?

### **An order for instalments is not appropriate**

[8] The Act includes an express provision allowing the Authority to order payment by instalments when making a compliance order.<sup>2</sup> This provision, however, relates only to circumstances where an *employer* is required to pay a sum of money *to* an employee. This is not the situation here.

[9] Rather, any discretion to order instalments in this case, involving payments due *from* an employee, would need to be exercised under the more general, additional provision at s 137(2) of the Act. This sub-section allows the Authority to order a person “to do any specified thing” for the purpose of preventing further non-compliance with a requirement on that person. This could include an order to pay instalments of an amount due under a settlement agreement, as a means of preventing further non-compliance with a requirement to pay an amount due under a settlement agreement.

[10] Such a discretion has to be exercised in a principled and practical way, that is it must be consistent with legal requirements and commonsense. Neither aspect is satisfied here, for two reasons.

[11] Firstly, a settlement agreement certified under s 149 of the Act contains terms which are declared to be final and binding. Those terms may be brought before the Authority only for enforcement, not for an action or review to change those terms.<sup>3</sup>

[12] In this case Mr Byrne was asking for an order for a further scheme of payments by instalment, which would be a change of the agreed terms. Section 149(3) of the Act does not permit such a change.

[13] Secondly, even if the change were permissible, any order for payment by instalments should have some realistic prospect that genuine efforts would be made to carry it out. Mr Byrne’s situation and his conduct to date did not indicate he could or was likely to comply with a further order for payment by instalments.

[14] From April to July 2025 Mr Byrne made no payment of any amount whatsoever towards the instalments due in that period. He also did not make any payments from then until this matter came for consideration by the Authority in late September and early October, although his account of his weekly income and expenditure showed a

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<sup>2</sup> Employment Relations Act 2000, s 138(4A).

<sup>3</sup> Employment Relations Act 2000, S 149(3).

small surplus from which he could have paid at least a token amount as a gesture of goodwill or intention.

[15] On that basis, without the consent of the party due to receive the payments, it was not permissible or practical for any compliance order to include provision for payment of the due amount by a further scheme of instalments.

[16] The prospect that Mr Byrne would not or could not pay the full amount if ordered to do so was not a reason to order instalments (which might also not be paid). Failure to pay the full amount now, if ordered by the Authority, would enable CRL to pursue other enforcement steps under the Act.

### **No order for interest**

[17] CRL asked that any compliance order include an order for payment of interest on the amount due under the terms of agreement.

[18] Clause 11 of Schedule 2 of the Act allows the Authority to order interest in any matter involving the recovery of money. It is not a provision that necessarily overrides the finality of terms set in in the Act for a settlement agreement certified under s 149. If the parties had intended that interest should accrue if amounts due under agreed instalment terms were not paid, they could have included such a term. They did not. Setting one now would be a change to the earlier terms they had agreed were final and binding.

[19] The request for an order for interest on the amount Mr Byrne is due to pay CRL is declined.

### **A penalty is necessary**

[20] The Act does allow for a party who breaches an agreed term of settlement, such as by not paying an agreed amount, to face an extra cost by way of a penalty for that breach.<sup>4</sup>

[21] Mr Byrne is liable for such a penalty, assessed against the factors listed in s 133A of the Act for determining an appropriate penalty. Case law establishes some additional factors in that assessment, including the financial capacity of a party to pay

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<sup>4</sup> Employment Relations Act 2000, s 149(4).

a penalty and whether any penalty awarded is proportionate to the sums involved and the nature or gravity of the breach.

[22] In this case a penalty was appropriate because Mr Byrne had voluntarily entered an agreement to pay certain amounts, compromising a larger debt, but paid nothing. It indicated a disregard on his part of the agreed terms from the outset. CRL lost the benefit of amounts awarded to it by the Authority and the court.

[23] Certified settlement agreements provide a means of resolution for many thousands of employment relationship problems each year. The certainty and reliability of these agreements is undermined by parties not doing what they said they would do when they had signed their agreement and asked a mediator to then certify their final and binding terms.

[24] In this case a penalty of \$2,000 was appropriate for Mr Byrne's breach of the agreement from as early as 14 April 2025, when the first payment was due, until today. This is a relatively modest amount, being 20 per cent of the maximum penalty that could be imposed on an individual for a single breach, but is sufficient to punish his conduct and discourage others from acting in the same way. While Mr Byrne's current financial means to pay the penalty may be limited, it is not set solely with regard to present circumstances but may allow for potential, future capacity to pay.

[25] This is also one of the relatively rare cases where the whole of the penalty could appropriately be ordered to be paid to CRL directly as the party put to the trouble of bringing the breach to the Authority's attention to enable it to be addressed, both for its own benefit and for the broader public good.<sup>5</sup> The public interest is met by the setting of a penalty without the need, in this case, for that amount to go to the Crown.

#### **A further costs award is appropriate**

[26] An award of further costs and expenses was also appropriate as a contribution to the costs CRL incurred for filing an application, along with an affidavit setting the relevant background and providing relevant documents. This is set at the relatively modest amount of \$1,125, being one quarter of the Authority's usual daily tariff, along with reimbursement of the Authority fee of \$71.55 charged for lodging applications.

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<sup>5</sup> Employment Relations Act 2000, s 136(2)

## **Order and next steps**

[27] Mr Bryne must pay CRL the following sums within 28 days of the date of this determination:

- (i) \$22,890 due under the terms of their settlement agreement; and
- (ii) \$2,000 imposed as a penalty under s 149(4) of the Act for breach of that agreement; and
- (iii) \$1,196.55 as a contribution to the costs and expenses incurred by CRL in bringing this application.

[28] In the event that Mr Byrne does not pay the ordered amounts, CRL may take further enforcement steps in the District Court, as available under s 141(1) of the Act or by further steps in the Employment Court, as available under 138(6) and 140(6) of the Act.

Robin Arthur  
Member of the Employment Relations Authority