

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 65  
5363662

BETWEEN JACKSON DARLOW  
Applicant  
AND CLOUD TWELVE LIMITED  
Respondent

Member of Authority: James Crichton  
Representatives: Applicant in Person  
Beat Suess, for Respondent  
Investigation Meeting: 22 February 2012 at Auckland  
Determination: 22 February 2012

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The applicant (Mr Darlow) seeks compliance with the terms of a settlement agreement reached with the respondent (Cloud 12). Cloud 12 acknowledges the settlement agreement but claims that “*additional financial constraints*” have occurred since settlement which have made payment impossible and it attributes the losses it has sustained to Mr Darlow. Mr Suess told the Authority that the company was seeking legal advice in relation to a possible counterclaim against Mr Darlow for the alleged damage.

[2] The Authority has sympathy for Cloud 12 if it has sustained damage to its business, but the legal position is that there is no crystallised claim against Mr Darlow which, in any event, he disputes the veracity of. Such a claim, if made, might not even be a claim in the employment jurisdiction.

[3] Conversely, Mr Darlow has a straightforward position. He seeks payment of the moneys contemplated by the settlement agreement reached between the parties

and is anxious about the prospective continuing delays in payment which he lays at the door of Cloud 12.

### **Determination**

[4] The Authority's considered view is that the record of settlement between these parties dated 9 August 2011 required payment of \$2,500 gross wages together with annual holiday pay of \$643.52 gross. Those payments have been due and owing since the record of settlement was entered into and signed by a mediator appointed by the Department of Labour. The record of settlement specifically contains the following provision:

7. *This is a full and final settlement of all matters between the applicant and respondent arising out of their employment relationship.*

[5] It follows that even if Cloud 12 was to raise a counterclaim alleging damage caused by Mr Darlow during the employment, production of this record of settlement with the clause just referred to would be a shield to such proceeding in the employment jurisdiction.

[6] Accordingly, the Authority now makes this compliance order requiring Cloud 12 to pay to Jackson Darlow the sums set out in the record of settlement in clauses 2 and 3 respectively, being wages of \$2,500 gross and holiday pay of \$643.52 gross, within 30 days of the date of this determination.

### **Costs**

[7] Costs are to lie where they fall.

James Crichton  
Member of the Employment Relations Authority