IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2025] NZERA 688
3371623

	BETWEEN	MACE HALLIDAY Applicant
	AND	VARN ENTERPRISES LIMITED Respondent

Member of Authority:	Philip Cheyne
Representatives:	Jacob Thompson, advocate for the Applicant No appearance by the Respondent
Investigation Meeting:	On the papers
Information received:	22 August 2025 from the Applicant 29 August 2025 from the Respondent
Date of Determination:	29 October 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] There is a record of settlement between Mace Halliday and Varn Enterprises Limited.

[2] Mr Halliday says that Varn Enterprises Limited (VEL) breached those terms. In his application to the Authority, Mr Halliday sought a compliance order, interest, a penalty (payable to him) and costs.

[3] VEL did not lodge a statement in reply.

The Authority's investigation

[4] After the application was allocated to me, I set a case management conference and notice was sent to VEL.

[5] VEL did not participate in the conference. However, I was told by Mr Halliday's representative that payments required by the settlement had already been made, a compliance order was not required and only the claims for a penalty and costs remained for investigation and determination. It was agreed that those matters could be determined on the papers.

[6] I set dates for an affidavit and submissions from Mr Halliday and for a statement in reply, an affidavit and submissions from the respondent.

[7] Mr Halliday lodged material as required. VEL did not lodge a reply but did lodge a sworn statement.

[8] When this application was lodged in the Authority, VEL had met its obligations under the terms of settlement or was about to do so. That might explain why it did not respond initially. VEL now says and I accept that the communications about the case management conference went to its junk email folder and its former representative (or her firm) did not forward the Authority's correspondence. To the extent necessary, I validate any informality and grant leave for VEL to defend the claim.

What happened

[9] There is a record of settlement entered into by the parties and signed by a mediator. The terms are final, binding and enforceable under the Employment Relations Act 2000 (the Act).

[10] VEL was required to make two payments by 1 April 2025, one to Mr Halliday and a second payment, on invoice, to his representative.

[11] VEL received the representative's invoice on 19 March 2025 and paid the amount required to the representative within time. However, VEL did not make the payment to Mr Halliday within time.

[12] VEL did not have any bank account details for Mr Halliday. VEL says and I accept that they asked their representative several times prior to the payment date to obtain the bank account details. The representative did not do that, nor did Mr Halliday's representative provide the account details before the following exchanges of emails.

[13] On 7 April 2025, bank account details were requested and provided. VEL attempted to pay but its bank reported that the details (account number and account name) did not match. Understandably, VEL did not action the payment. There followed several requests to and responses from Mr Halliday's representative to confirm the account details for the payment. VEL's bank still reported that the details did not match. Messages between VEL and its representative on 11 and 14 April 2025 show that VEL was still concerned about whether it had received the correct account details.

[14] Mr Halliday's representative knew the reason for non-payment. However, the representative cautioned that an application would be made to the Authority unless payment and proof of payment were provided by 3.00pm on Friday 11 April 2025.

[15] VEL finally actioned the payment on 14 April 2025. Mr Halliday received the money on 15 April 2025.

[16] Meantime, Mr Halliday lodged this application in the Authority in the afternoon on Friday 11 April 2025, as foreshadowed. The Authority forwarded the application to VEL on 16 April 2025.

A Penalty is not required

[17] The matters the Authority is required to have regard to in determining an appropriate penalty are set out in s 133A of the Act.

[18] An object of the Act is to promote mediation as the primary problem-solving mechanism. The underlying problem here was resolved by mediation. VEL partly complied with the settlement and took steps to complete the settlement, prior to the present application. A penalty is not required to further promote mediation as the primary problem-solving mechanism.

[19] VEL's breach of the obligation to pay the agreed amount to Mr Halliday by 1 April 2025 was not intentional or negligent. VEL sought further reassurance about the account details, given the mismatch reported once it had received the account number and had made several attempts to pay.

[20] Mr Halliday says that he was extremely humiliated having to beg for payment. However, he was in a very strong position, with legally enforceable terms of settlement. Mr Halliday knew that VEL had paid one part of the settlement and was attempting to pay him. I do not accept that the exchanges about the late payment to him could be characterised as him begging for payment.

[21] Mr Halliday says that he was significantly impacted by not receiving the payment on time. He refers to added stress caused by the two-week payment delay and that he had promised payment to some people, thinking he would receive the settlement on time. No specifics are provided, but I accept that some stress would have resulted. However, it is unclear what additional stress could be attributed to the delay from Friday 10 April, the date by which payment was demanded after which proceedings would be commenced, to Tuesday 15 April when payment was received.

[22] Overall, the nature and extent of any loss to Mr Halliday was minimal. If a penalty was imposed, there are not sufficient grounds to order it to be paid to Mr Halliday.

[23] Mr Halliday points to the additional costs incurred by applying to the Authority to enforce the settlement. However, costs arose from his decision about how to respond to the delay in payment, as described above. The application to the Authority did not cause VEL to make the payment – it was already taking steps to pay.

[24] Apart from completing its obligations under the settlement and the communication with Mr Halliday's representative about that, VEL has taken no other steps to resolve the matter.

[25] The circumstances of the breach are set out above. Mr Halliday submits that the level of VEL's culpability is not insignificant. I disagree. On the evidence before the Authority, VEL actively sought to meet its obligations in a timely manner, did not receive bank account information until 7 April and then actively sought to confirm that the bank account details were correct in response to the reported mismatch. VEL's

culpability was negligible. Rather, it was very cautious to ensure that its payment would actually be received by Mr Halliday.

[26] Mr Halliday was not a vulnerable employee.

[27] VEL has not previously been found to have been engaged in any similar conduct.

[28] Overall, VEL's default is less serious that in some other similar matters before the Authority.[1] There is no need to impose a penalty to deter VEL. Nor is there a need to impose a penalty to deter others from committing a similar breach.

[29] For these reasons a penalty is not required.

Summary and orders

[30] Although Varn Enterprises Limited breached the record of settlement, no penalty is fixed.

[31] Costs of $2,250.00 were sought. However, in light of the determination that a penalty is not required, Mr Halliday is not entitled to recover a contribution to his legal costs.

Philip Cheyne
Member of the Employment Relations Authority

[1] For example see *Pithawalla v Prime Transport & Logistics Limited* [2024] 341 (penalty of $500) and *Campbell v Rusty Radiator Limited* [2023] 294 (penalty of $200).