

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 371  
3324600

BETWEEN SOLOMONA HANIPALE  
Applicant  
AND VIP STEEL LTD  
Respondent

Member of Authority: Philip Cheyne  
Representatives: Ashleigh Fechney, advocate for the Applicant  
Jonny Sanders, counsel for the Respondent  
Investigation Meeting: 10 June 2025 in Christchurch  
Submissions Received: 23 June 2025 from the Applicant  
None required from the Respondent  
Date of Determination: 26 June 2025

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**DETERMINATION OF THE AUTHORITY**

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**The problem**

[1] Although never in an employment relationship, Solomon Hanipale and VIP Steel Limited (VIP) entered into a record of settlement (RoS) in April 2024, signed off by a mediator under s 149 of the Employment Relations Act 2000 (the ERA 2000).

[2] In September 2024, Mr Hanipale applied to the Authority to nullify the RoS.

[3] In its reply, VIP says that the RoS is a valid, full and binding agreement between the parties.

[4] VIP lodged its own claim against Mr Hanipale, based on alleged breaches of the RoS. Mr Hanipale lodged a statement in reply disputing those claims.

## **The Authority's investigation**

[5] Arrangements were made for a meeting to investigate both claims.

[6] VIP later withdrew its claim against Mr Hanipale.

[7] Relevant documents were exchanged, Mr Hanipale lodged a statement of evidence and a manager for VIP's holding company also provided evidence. Both appeared at the investigation meeting, confirmed the evidence on oath and answered questions.

[8] Each party also provided submissions during the investigation meeting.

[9] I later became aware of the judgment of the Court of Appeal in *Chief Executive of Ministry of Business Innovation, and Employment v Hairland Holdings Limited*.<sup>1</sup> The applicant was given an opportunity to provide further submissions and did so, succinctly and promptly. Nothing further was required from the respondent.

[10] In this determination, I will state relevant facts, state and explain relevant legal findings, and express conclusions on issues necessary to conclude the matter and set out any orders.

[11] There are no factual disputes to resolve, but it will be helpful to set out more of the background.

## **Background**

[12] In June 2023 Mr Hanipale was interviewed for employment with VIP by one of its managers, but was not offered a job.

[13] In March 2024, Mr Hanipale sent an email to Ms Fox. Ms Fox is a manager for VIP's holding company. In his email, Mr Hanipale complained about discrimination during his June 2023 interview and the content of emails between VIP managers afterwards. Mr Hanipale had received copies of those emails after he requested access to his personal information. He said in his email to Ms Fox that he had filed a formal complaint with the Human Rights Commission about the discriminatory treatment.

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<sup>1</sup> *Chief Executive of Ministry of Business Innovation, and Employment v Hairland Holdings Limited* [2025] NZCA 219.

[14] Additionally, Mr Hanipale sent an email to the Chief Executive of VIP (Mr Edinburgh) in early April 2024. It repeated aspects of the March 2024 complaint but added claims of breach of privacy and defamation.

[15] Solicitors acting for VIP, Mr Edinburgh and the VIP manager involved in the June 2023 interview wrote to Mr Hanipale on 9 April 2024. The solicitors set out a substantive response to Mr Hanipale's claims but also offered an ex-gratia settlement in the form of a record of settlement under s 149 of the ERA 2000.

[16] Mr Hanipale replied the same day. He rejected the offer and asked VIP and the managers to reconsider their settlement offer, failing which further legal action might result.

[17] VIP and the managers did not respond. However, on 15 April 2024 Mr Hanipale sent an email to the solicitor to say he had decided to accept the offer and move on with his life. He attached a signed copy of the record of settlement and gave his bank details for the payment provided by the record of settlement.

[18] On 17 April 2024 the solicitor sent Mr Hanipale a replacement version of the record of settlement, changing the text in the signature block from Employer and Employee to Party 1 and Party 2 and recording that Mr Edinburgh and the manager were signing for VIP and on their own behalf. The replacement record of settlement sent to Mr Hanipale was signed. It still provided for a Mediator to sign it in accordance with s 149 of the ERA 2000, with payment to follow that certification. Mr Hanipale was asked to sign and return the amended record of settlement to the solicitor.

[19] Mr Hanipale did so on 17 April 2024. The solicitor then sent the signed record of settlement to MBIE for a Mediator to complete it under s 149 of the ERA 2000.

[20] A Mediator signed the record of settlement on 24 April 2024. It was then sent back to each side. VIP deposited the agreed amount into Mr Hanipale's bank account on 24 April 2024.

## **Issues**

[21] By the time of the investigation meeting, Mr Hanipale was represented.

[22] Ms Fechney refined the case for Mr Hanipale as him seeking a determination that the Mediator did not have jurisdiction to sign the record of settlement in accordance with s 149 of the ERA 2000.

[23] If the Authority got to that point, the legal effect of the terms agreed between the parties would be an issue for the court or tribunal with jurisdiction to hear Mr Hanipale' claims.

[24] VIP says that the matter is within the Authority's jurisdiction and s 149 of the ERA 2000 is a complete bar to any further action by Mr Hanipale.

### **The Authority's power**

[25] The Authority must act as it thinks fit in equity and good conscience, but must comply with the ERA 2000.<sup>2</sup>

[26] The Authority has exclusive jurisdiction to make determinations about employment relationship problems generally, including any action related to the interpretation of the ERA 2000, being an action not directly within the jurisdiction of the court and not an action founded on tort.<sup>3</sup>

[27] The present application is not an action directly within the jurisdiction of the court as set out at s 187 of the ERA 2000, nor is it an action founded on tort.

[28] The Chief Executive of MBIE must employ or engage persons to provide mediation services to support employment relationships.<sup>4</sup> Mediation services include assisting persons to resolve employment relationship problems. Nothing in the ERA 2000 prevents the Chief Executive from providing dispute resolution services to parties in work-related relationships that are not employment relationships.<sup>5</sup>

[29] Under s 149(1) of the ERA 2000, where a problem is resolved, an appropriately authorised person may at the parties' request, sign the agreed terms of settlement. The authorised person must explain to the parties the effect of their signature and must be satisfied that, knowing that effect, the parties affirm their request for the person to sign

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<sup>2</sup> Employment Relations Act 2000 s 157(3).

<sup>3</sup> Employment Relations Act 2000 s 161(1)(r).

<sup>4</sup> Employment Relations Act 2000 s 144(1).

<sup>5</sup> Employment Relations Act 2000 s 144A.

the agreed terms of settlement. Following that affirmation, once the authorised person signs the agreed terms of settlement, statutory protections apply.

[30] The terms are final and binding, they may not be cancelled and except for enforcement purposes, no party may seek to bring those terms before the Authority or the court.<sup>6</sup>

[31] The effect is reinforced by s 152 of the ERA. No mediation services may be challenged or questioned in proceedings on the ground that the nature and content of the services or that the manner in which services were provided was inappropriate. However, that prohibition and s 149 of the ERA 2000 do not prevent a challenge to whether the provisions of s 149(2) and (3) of the ERA 2000 were complied with.

### **The Authority will not set aside the mediator's certification**

[32] Mr Hanipale says that the mediation process was deficient in that he received no legal advice, faced a 5-day deadline and that the mediator failed to clarify that s 149 of the ERA has “employment-only scope”.

[33] Mr Hanipale's points about legal advice and a 5-day deadline are not persuasive. He could have sought legal advice at any point. The settlement discussions were revived by Mr Hanipale after he initially rejected the offer, so his acceptance was not forced by the initial acceptance deadline. Even if the Authority could unwind what happened based on those two points, I would not. He freely agreed to the settlement and it would not be consistent with equity and good conscience to allow him to renege on it. But the difficulty for Mr Hanipale is that he is attempting to challenge or call into question in these proceedings the nature, content or manner of provision of the mediation services which were provided. He is prevented by s 152 of the ERA from doing that.

[34] Regarding an alleged failure to clarify the “employment-only scope” of s 149 of the ERA, Mr Hanipale refers me to *8I Corporation v Marino*.<sup>7</sup>

[35] In that case, the court considered as a preliminary issue whether s 149 of the ERA precluded it from inquiring into the enforceability of the terms of a s 149 settlement agreement. The court held that, penalty clauses being unlawful and

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<sup>6</sup> Employment Relations Act 2000 s 149(3)

<sup>7</sup> *8I Corporation v Marino* [2017] NZEmpC 69.

unenforceable at common law, s 149(3) of the ERA properly interpreted did not prevent it from inquiring into the enforceability of those terms. The court then noted at [49] that if that conclusion was wrong, it would have held that a mediator's certification of an agreement with a penalty clause would have been ineffective, being outside the scope of mediators' discretionary powers. In that case, the parties to the settlement each claimed to enforce its terms against the other. There had been an employment relationship between some of the parties, but the agreement included terms to settle a commercial dispute.

[36] The present claim by Mr Hanipale that the mediator did not have jurisdiction to certify the settlement agreement is based on the passage in the court's judgment just mentioned. The submission is that Mr Hanipale and VIP were not in a work-related relationship, the mediator was not empowered by s 144A of the ERA to provide mediation services, so could not sign the settlement under s 149 of the ERA.

[37] Section 144A provides that nothing in the Act prevents the chief executive from providing dispute resolution services to parties in work-related relationships that are not employment relations. The meaning of s 144A of the ERA is to be ascertained from its text and in light of its purpose. Participation in and the provision of dispute resolution services only happens by everyone's agreement, so there is no reason to read the section as limited to situations where work is performed or agreed to be performed such as by independent contractors and volunteers, as submitted for Mr Hanipale.

[38] The words "work-related relationship" are wide enough to cover interactions between an applicant for employment, their prospective employer, their interviewer and other employees in the workplace as part of their being interviewed for employment. I find that the mediator was empowered to provide dispute resolution services to the parties, extending to certification of the settlement agreement she signed at their request.

[39] It follows that the terms of settlement between Mr Hanipale, VIP and others are final, binding and enforceable.

**Summary**

[40] Although Mr Hanipale's claims against VIP and its managers could never have been investigated and determined by the Authority as they were not in an employment relationship, it was open for them to seek and be provided with dispute resolution services through the chief executive based on their work-related relationship.

[41] Given that finding, it is not necessary to resolve counsel's point that not all the parties to the record of settlement were joined to Mr Hanipale's claim.

[42] Mr Hanipale's claim is dismissed.

[43] Costs are reserved. If the respondent seeks costs, they may lodge, and then should serve, a memorandum within 28 days of the date of this determination. From the date of service of that memorandum the other party will then have 14 days to lodge a reply.

Philip Cheyne  
Member of the Employment Relations Authority