

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2020] NZERA 171
3092352

BETWEEN LEON HOSIE
 Applicant

AND STYROBECK LIMITED
 Respondent

Member of Authority: Geoff O’Sullivan

Representatives: Philip Mitchell, counsel for the Applicant
 Brendan Dryden, Director of the Respondent

Investigation Meeting: On the papers

Submissions Received: 19 March 2020 from the Applicant
 20 March 2020 from the Respondent

Date of Determination: 29 April 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 30 January 2020 the parties signed an agreement in settlement of an employment relationship problem. A Ministry of Business Innovation and Employment mediator certified the agreement in terms of s 149 of the Employment Relations Act 2000 (the Act).

[2] In the process of certifying the agreement, the mediator had the parties confirm that they understood the terms of settlement were final, binding, enforceable and could not be brought before the Authority except for enforcement purposes.

[3] In his statement of problem lodged on 18 February 2020 the applicant, Leon Hosie claimed that Styrobeck Limited had not complied with the terms of the settlement and sought orders that:

- (a) Styrobeck Limited be required to comply with all provisions of the record of settlement dated 30 January 2020 and in particular clauses 2, 3 and 5 of the record of settlement;
- (b) that Styrobeck Limited be required to pay costs of \$1750 plus GST;
- (c) that the Authority impose a penalty on the respondent for what the applicant saw as flagrant breaches of the record of settlement.

[4] Since the filing of the statement of problem, Styrobeck Limited states it has now complied with the terms of the settlement implying that should be the end of the matter.

The Authority's Investigation

[5] The parties have agreed that this matter can be dealt with on the papers and it is accepted by the applicant that all payments due in terms of the record of settlement have now been made.

[6] There has been some issue between the parties regarding the wording of the Certificate of Service required by the record of settlement but Styrobeck Limited submits it has fixed the issue, and would have done so earlier had any problem with the Certificate of Service been brought to its attention. Both parties filed brief submissions outlining their point of view. Despite payment now having been made, Mr Hosie still seeks costs, a penalty to be imposed on Styrobeck Limited and a compliance order especially in respect of the provision of a compliant Certificate of Service.

[7] The matters the Authority needs to decide therefore are:

- (a) should an order for compliance be made bearing in mind there has now been settlement of all outstanding matters with the exception of any issue regarding the wording of the Certificate of Service;
- (b) should a penalty be imposed on Styrobeck for late payment of the amounts due in terms of the record of settlement;

- (c) should an order be made requiring Styrobeck Limited to pay Mr Hosie's costs of representation and to reimburse him for the filing fees paid in respect of lodging this matter in the Authority.

[8] As permitted by s 174E of the Act, this determination has stated findings of fact and law, express conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Compliance Order

[9] Styrobeck Limited has complied at least substantially with the record of settlement. There is no dispute that compliance only occurred after Mr Hosie filed for enforcement. The reasons given for the delay by Styrobeck Limited are on the face of it reasonable, however if it had difficulties in finding Mr Hosie's account details, this could have been resolved far more quickly by contacting Mr Hosie's representative who no doubt could have provided the required information. Further, there was nothing to stop Styrobeck at least advising Mr Hosie's representative that there would be a delay. Of concern is the fact the applicant's counsel emailed the respondent regarding the lack of payment but received no reply. As the applicant's fees were paid no later than eight days after receipt of an invoice, I do not see that the company acted unreasonably in that regard.

[10] Little would be served by ordering compliance in respect of payments already made. However, as there may be some issues regarding the provision of the Certificate of Service required in terms of clause 5 of the record of settlement, Styrobeck Limited is ordered to forthwith ensure it has provided a Certificate of Service for Mr Hosie which covers the dates of his employment, the position he held, a description of the duties he undertook and confirmation that he resigned from his employment. Styrobeck Limited must do this within seven days of the date of issue of this determination.

Penalty for Breach of a Term of a Certified Settlement Agreement

[11] Under s 149(4) of the Act, a person who breaches an agreed term of settlement is liable to a penalty imposed by the Authority. There is no dispute in this case that a breach has occurred namely the failure of Styrobeck limited to pay the full amounts due by the agreed dates.

[12] An object of the Act is to promote mediation as a primary problem solving mechanism which includes a s 149 provision for final and enforceable certified agreements. Strict compliance with the record of settlement is expected and both parties should be able to rely on this. It is not open to one party to change the terms of settlement including dates for payment.

[13] I am however mindful that there has now been substantial if not complete compliance with the record of settlement. Styrobeck Limited needed to take steps such as contacting Mr Hosie's representative if it did not have sufficient account details. There appears to be no oversight even after Styrobeck Limited was put on notice by Mr Hosie's counsel that payment had not been made. The maximum penalty in this case treating a breach as a single breach is a penalty of up to \$20,000. A penalty is required to recognise the breach by Styrobeck Limited and also to act as a deterrent generally to parties indicating there are consequences for breaching an agreed term of settlement. I have considered the factors in the Act. In this case I consider a penalty of \$1,000 is appropriate.

Costs

[14] Mr Hosie was justified in filing for compliance. He is entitled to an order for a contribution towards his costs of representation and for reimbursement of the fee of \$71.56 paid to lodge his application in the Authority. Mr Mitchell now seeks costs in the sum of \$2,200 plus GST. The Authority's usual daily tariff for costs, as a contribution towards costs of representation reasonably incurred in preparing for and in attending an investigation meeting, is \$4,500. This case did not require an investigation meeting but did require provision of attendance at a telephone conference together with preparation of submissions. The appropriate award of costs is set at \$1,000. This also allows for some of the time that Mr Mitchell was required to spend on numerous interchanges with Styrobeck Limited in attempts to resolve the matter earlier.

Summary of Orders

[15] By no later than seven days from the date of the issue of this determination Styrobeck Limited must comply with clause 5 of the record of settlement and provide a complete Certificate of Service covering dates of employment, the position and a description of the duties performed by Mr Hosie together with confirmation he resigned from that position.

[16] By no later than twenty-eight days of the date of issue of this determination Styrobeck Limited must pay Mr Hosie \$1,000 as a contribution to his costs of representation together with the sum of \$71.56 in reimbursement of the fee paid to lodge this application in the Authority.

[17] By no later than twenty-eight days of the date of issue of this determination Styrobeck Limited must pay to the Crown the sum of \$1,000 as a penalty under s 137 and s 149(4) of the Act for breach of an agreed terms of settlement. On recovery of that penalty, \$500 is to be paid to Mr Hosie and \$500 to the Crown account.

Geoff O'Sullivan
Member of the Employment Relations Authority