

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2020] NZERA 326  
30909523

BETWEEN YING HUANG  
Applicant

AND HOLLYWOOD BAKERY  
(HOLDINGS) LIMITED  
Respondent

Member of Authority: Eleanor Robinson

Submissions 3 August 2020 from the Applicant  
None from the Respondent

Investigation Meeting: On the papers

Determination: 18 August 2020

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, Ms Ying Huang, and the Respondent, Hollywood Bakery (Holdings) Limited (HBHL) entered into a mediated settlement agreement on 19 December 2019 (the Record of Settlement).

[2] On 8 February 2020 Ms Huang filed a statement of problem in the Authority claiming that HBHL had failed to adhere to clauses 2, 3 and 5 of the Record of Settlement.

[3] Following a case management conference call with the Authority held on 26 June 2020 and attended by Ms Huang and a representative for HBHL, Ms Huang was paid the monies owed to her by HBHL and supplied with a written reference in compliance with the terms of the Record of Settlement.

[4] Ms Huang is now seeking a penalty in respect of the breach of the Record of Settlement by HBHL.

**Note**

[5] The parties agreed to the Authority determining this issue based on the Statement of Problem and the Applicant's submissions.

## **Penalty**

[6] The Act includes provisions encouraging parties to resolve their employment relationship issues between themselves. The Record of Settlement represents such a resolution and therefore the failure by one party to honour the terms of any resulting agreement is a serious matter.

[7] Public confidence in s 149 settlements will be undermined if it is perceived that parties are permitted to breach these settlements with impunity. It is important that the parties can have confidence in the enforceability of the terms of agreed settlements.

[8] The parties entered into the Record of Settlement on 19 December 2019 but Ms Huang had to seek the intervention of the Authority on 8 February 2020 before compliance with the terms of settlement took place.

[9] Having considered the principles which should govern the imposition of a penalty<sup>1</sup>, I determine that a penalty of \$400.00 is appropriate in all the circumstances of this case given the intentional nature of the breach of a term of a Record of Settlement freely entered into by the parties.

**[10] I order that HBHL is to pay a penalty of \$400.00, 25% (\$100.00) of which is to be paid to the MBIE Trust Account, and 75% (\$300.00) of which is to be paid to Ms Huang. Payment is to be made within 14 days of the date of this Determination.**

## **Filing Fee**

**[11] HBHL is also ordered to pay Ms Huang the filing fee of \$71.56 within 14 days of the date of this Determination.**

## **Costs**

[12] Ms Huang represented herself and there is no issue as to costs.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**

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<sup>1</sup> *Borsboom (Labour Inspector) v Preet PVT Ltd and Warrington Discount Tobacco Ltd* [2016] NZEmpC 143