

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 148
3204599

BETWEEN HYPE & DEXTER LIMITED
Applicant

AND NIKHIL NAIDU
Respondent

Member of Authority: Robin Arthur

Representatives: Clare Frost, advocate for the Applicant
Respondent in person

Investigation: On the papers

Determination: 27 March 2023

DETERMINATION OF THE AUTHORITY

- A. Nikhil Naidu must pay Hype & Dexter Limited the following sums by no later than 28 days from the date of this determination:**
- (i) \$1,560.03 in payment of his debt; and**
 - (ii) \$460 for enforcement costs; and**
 - (iii) \$571.56 for its costs and expenses incurred in the Authority.**
- B. By no later than 28 days from the date of this determination Nikhil Naidu must also pay \$1,000 to the Employment Relations Authority as a penalty for breaching a term of a certified record of settlement. On recovery of the penalty, the Authority must transfer that amount to a Crown account.**

Employment Relationship Problem

[1] In May 2022 Hype & Dexter Limited (HDL) and Nikhil Naidu resolved an employment relationship problem on terms recorded in a settlement agreement. Their

agreement was then certified by an employment mediator under s 149 of the Employment Relations Act 2000 (the Act). The certification activated provisions of the Act making the terms of settlement final, binding and enforceable and only able to be brought before the Employment Relations Authority for enforcement purposes. The Act also provides that a person who breaches an agreed term of settlement is liable to a penalty imposed by the Authority.

[2] In December 2022 HDL applied to the Authority for orders requiring Mr Naidu to comply with their agreed terms by paying an outstanding debt of \$1,560.03 and enforcement costs of \$460. Payment of future costs to recover the debt was an agreed term of their certified agreement. In addition to enforcement costs of \$460 incurred before its application to the Authority, HDL also asked for Mr Naidu to be ordered to pay a penalty for breaching their agreement and to pay a further amount towards its costs and expenses of applying to the Authority.

The Authority's investigation

[3] Authority records show a copy of HDL's application, along with information about providing a statement in reply, was sent to Mr Naidu at an email address on which he had communicated with HDL and was delivered to an address for him provided by the company as his last known residential address. Courier records show the Authority's correspondence was delivered to his residential address on 13 January 2023. Officers of the Authority also repeatedly attempted to contact Mr Naidu by telephone but he had not answered their calls and not replied to messages left after his voice mail message.

[4] By email and voicemail message Mr Naidu was invited to attend an Authority case management conference to discuss how HDL's application was to be considered. Before and at the scheduled time of the conference an Authority officer made further attempts to contact Mr Naidu by telephone, without success. In a brief conference call with HDL's representative, Ms Frost confirmed the street address provided by HDL was its last known residential address for Mr Naidu and, as far as the company knew, the email address and telephone number for Mr Naidu were current.

[5] Following the call Authority directions were sent to the parties advising the basis on which HDL's application would likely be determined and providing Mr Naidu with a further and final opportunity to respond and to provide any relevant information

within the next 14 days. Authority records show this message was sent to Mr Naidu's email and residential addresses. No response was received.

Orders

[6] There was no contest to HDL's claim that Mr Naidu had an outstanding debt to it of \$1,560.03, having paid some but not all of a debt acknowledged in their agreed terms of settlement. The agreed term allowed for payment by instalment over time but the agreed period of time had expired with this amount still due.

[7] HDL was entitled to the order, made at paragraph A above in this determination, for payment of the outstanding amount of \$1,560.03. The order has been made under s 137 of the Act.

[8] An order for payment of enforcement costs, allowed under an agreed term of settlement and also made at paragraph A above in this determination, was warranted on the same basis.

[9] Mr Naidu was also liable to a penalty for breaching the agreed term to pay his debt in the agreed instalments by the agreed date. Settlement agreements certified under s 149 of the Act have a special statutory status that provides certainty and finality for parties who resolve their employment relationship problems under that provision of the Act. Breaching those terms seriously undermines the integrity of this statutory scheme. Weighing matters relevant to setting the amount of a penalty, and with Mr Naidu having provided no information about the reason for his breach or about his ability to pay any penalty, \$1,000 was an appropriate amount to set as a penalty for this breach.¹

[10] HDL asked that the Authority order any penalty imposed then had to be paid to the company because of the time and expense it incurred in seeking compliance with the certified agreement. Its request is denied. Payment of expenses that might be incurred for enforcement were an agreed term, under which an order for payment has already been made. HDL also sought a further award towards costs incurred in applying to the Authority. Ordering payment of the penalty to HDL rather than the Crown would be amount to double dipping by the company and go beyond the scope of terms it had agreed with Mr Naidu in the event that enforcement was necessary.

¹ Employment Relations Act 2000, s 133A and s 149(4).

[11] Mr Naidu must pay the penalty of \$1,000 within 28 days of this determination to the Authority. On recovery of the penalty, the Authority must transfer that amount to the Crown account.

A further order for costs

[12] HDL sought an order for costs of \$1,104 said to have been incurred in its application to the Authority, along with reimbursement of the Authority fee of \$71.56.

[13] For a matter determined on the papers and requiring only brief attendance at a case management conference, the amount sought was in excess of what would usually be set for costs under the Authority's daily tariff. The sum of \$500 was an amount appropriate to the modest level of costs expected in the Authority.

[14] HDL was also entitled to reimbursement of the Authority fee. Accordingly, \$571.56 is the amount that Mr Naidu must pay HDL as a contribution to costs and expenses incurred by the company in seeking the compliance and other orders made.

Robin Arthur
Member of the Employment Relations Authority