

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 647  
3331720

BETWEEN GRANT INGHAM  
Applicant

AND ALLIANCE GROUP LIMITED  
Respondent

Member of Authority: Antoinette Baker

Representatives: Andrew McInnes, counsel for the applicant  
Shaun Brookes, counsel for the respondent

Investigation meeting: 17 June 2025, 14 July 2025

Submissions: 14 July 2025

Date: 15 October 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Mr Ingham's employment as a senior financial officer ended with Alliance Group Limited (Alliance) on terms contained in a confidential Record of Settlement (ROS) under s 149 of the Employment Relations Act 2000 (the Act). The ROS was signed as a full and final settlement by the parties and certified by an authorised mediator in June 2024. The parties then ended the employment earlier than stated in the ROS due to circumstances that have now brought them to the Authority.

[2] Both parties claim the other breached the ROS and seek remedies for this. There are two Determinations issued by me today. This one, Mr Ingham's claim, (the claim) and the one determining the proceedings brought by Alliance<sup>1</sup> (the counter claim). I explain the reason for this approach below. To the extent necessary and appropriate given the same factual matrix involved there is some repetition in the two Determinations.

[3] Mr Ingham asks for a compliance order, a penalty for breach of the ROS, interest and costs. This is because Alliance did not pay him two lump sums within seven days from the employment termination date which was recorded in the ROS to be 30 September 2024 but later changed by agreement to 29 July 2024. Those lump sums were recorded in the ROS as:

- a. an 'ex gratia' payment of \$34,386.25 (gross); and
- b. \$20,000.00 ('tax free') under s 123(1)(c) of the Act.

[4] In response to this claim Alliance does not deny the above ROS obligation but seeks to 'set off' these payments as a defence because it says Mr Ingham breached the ROS in other ways.

[5] Mr Ingham disputes the 'set off' that Alliance claims as a 'defence' in that it is self-enforcement and that his actions claimed as breaches of the ROS were either a mistake for which he apologised, he offered undertakings in relation to ongoing confidentiality and or lacked any intent to breach. Mr Ingham says that if penalties are to be awarded against him for breach of the ROS they should be at the low end.

### **The Authority's Investigation**

[6] Mr Ingham lodged his claim, and it was responded to by Alliance as per the above a 'set off' with further positive claims against Mr Ingham. I held a phone conference call with counsel. I directed that Alliance lodge separate proceedings for what was more than a 'set off' defence to Mr Ingham's claim. It was a claim that Mr Ingham had in turn breached other parts of the ROS and sought various penalties. My directions to the parties<sup>2</sup> explained that the enforcement available under the Act to a party to a ROS is only by way of an 'application' for a compliance

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<sup>1</sup> *Alliance Group Limited v Ingham* NZERA [2025] 648.

<sup>2</sup> Directions of the Authority (3331720) dated 5 March 2025 at [5].

order under s 137 of the Act that is started with ‘commencement of proceedings.’ The latter is defined as being done by lodging with an Authority Officer an ‘application’ that includes a ‘statement of problem’ accompanied by the prescribed fee.<sup>3</sup> Penalty applications also require ‘commencement of proceedings’ and are linked from this date to assess the strict 12 month statutory timeframe to bring penalty applications.<sup>4</sup>

[7] Alliance duly lodged a separate claim (the counterclaim) and this was responded to. I indicated I would hold an investigation meeting to hear both claims given the same sequence of events applied to both.

[8] As directed, statements of evidence were exchanged and received by the Authority from Mr Ingham and for Alliance, Mr Ken Smith, in-house counsel; Ms Jessica Lodwidge, human resources; and Mr Christopher Bulovic, head of technology operations. I held an in person investigation meeting. Under oath or affirmation, I asked questions of the witnesses. Counsel had the opportunity to do the same. I heard oral submissions based on written submissions on a further date after the investigation meeting. I then reserved my determinations.

[9] As noted above, this Determination is released at the same time as my Determination for the counterclaim.<sup>5</sup>

[10] As permitted by s 174E of the Act, this determination has stated findings and expressed conclusions as necessary to dispose of this matter. It has not recorded all evidence and submissions received.

## **Issues**

[11] The issues for investigation and determination are:

- (i) Should a compliance order be made that Alliance pay Mr Ingham the two outstanding lump sum payments agreed to be paid to him under the ROS within seven days from the employment termination date?

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<sup>3</sup> Employment Relations Authority Regulations 2000, clauses 5,6,8.

<sup>4</sup> See above clauses 5 and 6; Employment Relations Act 2000, s135,(5).

<sup>5</sup> See above at note 1.

- (ii) Should a penalty be ordered against Alliance for non-payment of the agreed two lump sums as a breach of the ROS?
- (iii) If a penalty is ordered should any part be paid to Mr Ingham?
- (v) What if any costs are to be awarded one to the other?

**Should a compliance order be made that Alliance pay Mr Ingham the two outstanding lump sum payments agreed to be paid to him under the ROS within seven days from the employment termination date?**

[12] Section 137(1)(iii) of the Act empowers the Authority to order a party to comply with any *terms of settlement*<sup>6</sup> which s 151 of the Act provides may be enforced by a compliance order. Section 151 applies to any agreed terms of settlement enforceable by the parties under s 149(3) of the Act. This means that in considering a compliance order I can only do so as it relates to the terms of settlement in the ROS and not against matters not captured by such terms.

[13] The ROS in this matter clearly stated that the parties agreed that Mr Ingham was to be paid the above referred lump sums within seven days of the date of the termination of employment. It was a financial obligation which in effect ended as final and binding matters between the parties without referencing what these were accept that Alliance did not accept liability and Mr Ingham agreed to resign with terms about how that would be communicated by the parties. On the face of it, the nonpayment of the two lump sums due to be paid over one year ago is a breach of the ROS by Alliance.

[14] Even though the termination date changed to 29 July 2024 as recorded in communications between parties at the time, those communications show me that Alliance considered the two lump sums still to be an obligation under the ROS. The communications do not support that Alliance did not consider the obligation to be at an end. I note that cancellation is not an option for a ROS.<sup>7</sup> Mr Smith in his oral evidence explained it was a deliberate choice for Alliance to not pay the two lump sums. Alliance was concerned that the monetary value of the two lump sums may not be recouped given the concerns Alliance had about the possibility

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<sup>6</sup> Italics added for emphasis.

<sup>7</sup> Employment Relations Act, s149(3)(ab).

through ‘strong inference’ that Mr Ingham had caused it financial loss by his actions. Mr Smith described this approach as preferable to Alliance ‘going full nuclear’ by making applications which I took it considered may be available for breach of restraint of trade and confidentiality obligations under the IEA to which it would seek damages. I consider this approach inconsistent with the way to seek enforcement of a ROS which is by seeking a compliance order under s 137 of the Act and or an application for breach under s 149(4) of the Act.

[15] The ROS does not contain any reference to an agreement that Alliance could self-enforce in the above way. I accept the submission for Mr Ingham about self-enforcement not being available. Records of settlement are documents with statutory parameters that the public needs to trust will be upheld without this type of self-enforcement occurring before breaches are proven or made. I will return to this below when considering a penalty. For now, while I acknowledge Alliance has claims about Mr Ingham’s noncompliance in other aspects of the ROS I do not accept Alliance was entitled to unilaterally not pay the two lump sums as a ‘set off’. While it is submitted for Alliance that I should consider the inequity of making a compliance order in the light of the counterclaims, my determination for the counterclaim addresses any potential remedies back the other way. The represented parties are able manage any balancing of orders between themselves.

[16] Accordingly, within 28 days from the date of this determination I order that Alliance pay to Mr Ingham the following payments:

- a. an ‘ex gratia’ payment of \$34,386.25 (gross); and
- b. \$20,000.00 (‘tax free’) under s 123(1)(c) of the Act.

**Should a penalty be ordered against Alliance for non-payment of the agreed two lump sums as a breach of the ROS? If a penalty is ordered should any part be paid to Mr Ingham?**

[17] The Authority under ss 149(4), 133 and 135 of the Act has the jurisdiction to award a maximum \$20,000.00 penalty against a company for breaches ‘of an agreed term’ of a s149 settlement (ROS). Section 136(2) of the Act says the Authority may order the whole or part of any penalty be paid to any person.

[18] Section 133A of the Act sets out that in determining the amount of a penalty I must have regard to ‘all relevant factors’ including: (a) the object of the Act (b) the nature and extent of the breach (c) whether the breach was intentional, inadvertent, or negligent (d) the nature and extent of any loss or damage suffered by any person or gains made or losses avoided by the person in breach (e) whether the person in breach has taken steps to mitigate the potential adverse effects of the breach (f) the circumstances in which the breach occurred including the vulnerability of the employee (g) whether the person involved in the breach has previously been found by the Authority or the court to have been engaged in similar conduct.

[19] Chief Judge Inglis in the Employment Court noted that in relation to breaches of settlement agreements, ‘There is a broader public interest in deterring parties from renegeing on s 149 settlement agreements, and of underscoring the importance of compliance, however inconvenient that might prove to be.’<sup>8</sup>

#### *Object of the Act*

[20] The object of the Act under s3(a)(v) includes the promotion of mediation as a ‘primary problem-solving mechanism’ over enforcement litigation. Alliance took the step of self-enforcement. While it may be heard to say this was a pragmatic step to avoid more serious litigation I have already commented above about the narrow options for enforcement of a ROS when breaches of a ROS allegedly occur. I find this factor lends support towards a penalty at medium range particularly given the length of time and the amount outstanding.

#### *The nature and extent of the breaches (severity, number and nature of breaches)*

[21] I agree with the submission for Mr Ingham that the deliberate decision to not pay the two lump sums and the length of time Mr Ingham has been without them adds to the severity of the breach. The amount outstanding totals \$54,386.25 albeit subject to part taxation on the \$34,365.25 gross figure. This is a significant payment. I accept Mr Ingham is in the older age of his working carer. I accept this amount was likely a buffer for him to have then worked for a successive employer on less salary. The amount has remained outstanding for over twelve months on what I accept was a strategic deliberate decision by Alliance not to pay. Mr Smith’s

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<sup>8</sup> *Lumsden v Skycity Management Limited* [2017] NZEmpC 30 at [11].

evidence supports this was behind the nonpayment. I note further that Mr Smith's evidence at the investigation meeting included that he had decided that Mr Ingham had probably not breached confidentiality by passing on confidential information to his subsequent employer but likely just was going to use some templates. Again, considering the circumstances and if necessary Mr Ingham's behaviour, Alliance likely had no real understanding of the basis upon which it claimed a 'set off' other than an inference. For Mr Ingham that there is a degree of serious unfairness suffered here for the 'self-help' approach taken. This supports a more than low penalty.

*Whether the breach was intentional, inadvertent, or negligent*

[22] I do not consider the breach inadvertent. Alliance was advised. As above, the decision was in keeping with a strategy. More than low penalty.

*The nature and extent of any loss or damage suffered by any person or gains made or losses avoided by the person in breach*

[23] As above, I accept that Mr Ingham is at the age of the latter part of his employment days and likely was relying on these lump sums as a buffer. However, I also note his somewhat disingenuous oral evidence when asked why he obtained employment during his 'Garden Leave' with Alliance's competitor. Mr Ingham conceded in his oral evidence that he probably thought he could get away with two salaries being paid to him. His evidence was varied about him saying he did not understand the terms of the ROS. I find it implausible given his level of seniority and experience that he could not have understood the terms he signed. While I will consider this in the counterclaim determination I find a cynical element here that goes at least away from ordering any penalty in full to Mr Ingham and overall, dents anything more than a lower end penalty for the company.

*Whether the person in breach has taken steps to mitigate the potential adverse effects of the breach*

[24] I find nothing here that indicates Alliance took steps to mitigate the breach here. This supports a penalty.

*The circumstances in which the breach occurred including the vulnerability of the employee*

[25] This is not a matter where Mr Ingham is an apparent exploited employee. He was a senior employee with what he explained was a knowledge of ROS settlements. I accept however that he was left with little power to have the two lump sums paid except to come to the Authority, an action that then sparked Alliance to respond. There is an element here where I am left wondering what if anything would have happened if Mr Ingham had not lodged his compliance application. I do not find this factor supports more than a low level penalty.

*Whether the person involved in the breach has previously been found by the Authority or the court to have been engaged in similar conduct*

[26] I have nothing before me to show that Alliance has previously breached a ROS in similar circumstances. Again, this remains a neutral point. I accept the circumstances in this matter and in the counterclaim are unusual.

*Ability to pay*

[27] I have nothing before me to show that Alliance has an inability to pay a penalty.

*Deterrence – consistency with other penalty awards*

[28] I have considered other matters where penalties have been awarded for noncompliance of s149 settlements and accept this is a unique situation. The approach taken by Alliance to self-enforce ignored that a ROS is the type of agreement that needs to be relied on by the public to be honoured. I find there is a need to deter self-help approaches but also temper this due to some contribution to the overall situation by Mr Ingham as reflected in both this and the counterclaim determination. I find that an appropriate penalty is \$5,000.00. I find it reasonable that of this amount Mr Ingham is to be paid \$2,000.00.

## **Interest**

[29] While Mr Ingham did not claim interest on the unpaid sums in his initiating documents, I am able of my own volition award interest<sup>9</sup>. I note it is included in the submissions to the Authority. I find this matter and the length of time that the outstanding lump sums have remained unpaid to Mr Ingham warrants an award of interest from the date that I conclude the sums were due (within seven days from 29 July 2024) to the date of this determination, 15 October 2025. The interest is to be calculated based on the net sum of the taxable \$34,386.25 gross and the whole amount of the \$20,000.00 sum. Calculation is to be made under the method in Schedule 2, clause 11 of the Act.

## **Outcome**

[30] Within 28 days from the date of this determination Alliance Group Limited is ordered to comply with its obligation under the Record of Settlement it entered into under s149 of the Act by paying to Grant Ingham the following:

- a. \$34,386.25 gross with additional interest on the nett sum calculated under schedule 2, clause 11 of the Act for the period from 5 August 2024 to the 15 October 2024 and
- b. \$20,000.00 a payment relating to s123(1)(c) of the Act being without tax together with additional interest on this whole sum calculated under schedule 2, clause 11 of the Act for the period 5 August 2024 to the 15 October 2024.

[31] Within 28 days from the date of this determination Alliance Group Limited is ordered to pay a penalty of \$5,000.00 under s149(4) of the Act as follows:

- a. The sum of \$3,000.00 is to be paid to the Crown and the sum of \$2,000.00 is to be paid to Grant Ingham.

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<sup>9</sup> Employment Relations Act 2000, schedule 2, clause 11.

## **Costs**

[32] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[33] If the parties are unable to resolve costs, they may revert back to the Authority for assistance with a proposed timetable to provide respective submissions (particularly in the event that costs also remain unresolved for the counterclaim determination). The parties are asked to communicate if that assistance is required no later than 28 days from the date of this determination. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[34] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual 'daily tariff' basis unless circumstances or factors, require an adjustment upwards or downwards.

Antoinette Baker  
Member of the Employment Relations Authority