

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 226
3065512

BETWEEN

SHANNON JAMES
Applicant

AND

TRAVAMA HOLDINGS
LIMITED
Respondent

Member of Authority: Marija Urlich
Representatives: No appearance for the Applicant
Arthur Anae for the Respondent
Investigation Meeting: 10 June 2020 by telephone
Determination: 11 June 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms James says Travama Holdings Limited (Travama) has breached obligations owed to her under a record of settlement. She seeks orders to enforce the record of settlement, an apology, compensation and reimbursement of the filing fee incurred in lodging this application.

[2] Travama denies any breach.

The Authority's investigation

[3] On 20 May 2020 the Authority issued a minute to the parties proposing the investigation meeting for this employment relationship problem be held by telephone and setting out the issues to be determined. The minute and notice of hearing were served on the parties by way of email.

[4] On 22 May the Authority Officer assigned to this matter spoke with Ms James who confirmed her wish for the investigation meeting to go ahead.

[5] On 9 June an email reminder of the investigation meeting was sent to the parties as well as confirmation of the telephone numbers on which they would be contacted.

[6] At the scheduled start time, Ms James was unable to be contacted. A message was left on her telephone that the investigation meeting would commence 10 minutes after the scheduled start time. A further attempt was made to contact her and another message left. The meeting proceeded in Ms James absence. Arthur Anae, a director of Travama, gave evidence. In determining this matter the Authority has considered Mr Anae's evidence and the documents filed by the parties.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Issues

[8] The issues requiring investigation and determination were:

- (i) Has Travama breached the record of settlement dated 11 June 2019 by:
 - (a) Failing to provide a certificate of employment as required by paragraph [3];
 - (b) Failing to pay outstanding entitlements as required by paragraph [7];
and
 - (c) Failing to pay Zavier James 12 hours pay as required by paragraph [8]?
- (ii) If Travama has breached the record of settlement is Ms James entitled to compensation?
- (iii) Is Ms James entitled to be reimbursed the filing fee of \$71.56 incurred in lodging her application?

The certificate of employment

[9] The record of settlement required Travama to provide Ms James with a certificate of service. The record of settlement did not require that the wording of the certificate be agreed.

[10] In her statement of problem Ms James said she was “not happy” with the last sentence of the certificate of employment.

[11] Mr Anae said the last sentence was an honest statement of fact – at date of issue of the certificate Travama had no responsibility for Ms James.

[12] The Authority has considered the certificate of service in light of the non-disparagement clause of the record of settlement and the ordinary meaning of a certificate of service. It is accepted Ms James is not happy, but it has not been established that the certificate breaches the record of settlement.

Payment of entitlements

[13] There is no dispute all money owed under the record of settlement has been paid. Ms James’ concern is understood to be that some money was received outside the agreed timeframe.

[14] Within the seven day agreed payment period Ms James’ received \$4,565.68 from Travama. Within 17 days of the agreed payment period Ms James received a further payment from Travama of \$96.50 – 3 hours public holiday pay and 3 hours alternative holiday pay (lieu day).

[15] Under the terms of the record of settlement all payments should have been made within 7 days of the date of that agreement. They were not.

[16] There is no breach of the terms of the payment to Zavier James (made 24 days after the date of record of settlement) because the record of settlement set no timeframe within which that payment was to be made.

[17] Mr James was not a party to the record of settlement. If a breach had been established it is unlikely he or Ms James could have enforced the record of settlement against Travama.

[18] Ms James has established a breach the record of settlement.

Compensation and filing fee

[19] Ms James seeks compensation, an apology and reimbursement of the filing fee. The Authority does not have jurisdiction to order an apology and it is not clear what compensation Ms James seeks.

[20] It is accepted Ms James had to follow up the unpaid public holiday and alternative holiday entitlement and it is accepted this would be inconvenient. However, it is not clear why she filed an application in the Authority before raising the shortfall with Travama particularly given Travama immediately paid the shortfall when it was drawn to its attention, apologised for the inconvenience caused and, at hearing, provided an explanation for what was described as an oversight.

[21] The compensation claim is declined as is the claim to reimburse the filing fee.

Summary of orders

[22] The application is dismissed.

Marija Urlich
Member of the Employment Relations Authority