

dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Issue

[7] The issue requiring investigation are whether or not Mr O'Callaghan breached s 149 of the Act.

Background

[8] Mr Jenkins was an employee of Signature Press Limited (SPL). An employment dispute arose between them and the parties attended mediation. Whilst no resolution was reached at mediation, the parties thereafter entered into the Record of Settlement on 30 June 2025 which was certified by a mediator under s 149 of the Act (the ROS) on 3 July 2025.

[9] The parties to the ROS were Mr Jenkins, Signature Press Limited and Mr O'Callaghan, sole director and a shareholder of SPL. Mr O'Callaghan had signed the ROS.

[10] The relevant clause of the ROS in respect of this issue is clause 4 which states:

4. Subject to this agreement being certified by a Mediator, Grant O'Callaghan will undertake to purchase the Employee's 10% Shareholding in Signature Press Limited at cost price (being \$50,000.00) by no later than 30 November 2025. Grant O'Callaghan will purchase the Employee's 10% shareholding in 2 equal instalments as follows

(a) \$25,000.00 on 30 October 2025 (instalment 1)

(b) \$25,000.00 on 30 November 2025 (instalment 2)

[11] The Record of Settlement was certified under s 149 of the Act by the Mediator. That certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms:

- a. were final, binding and enforceable; and
- b. could not be cancelled; and
- c. could not be brought before the Authority or the court for review or appeal, except for the purposes of enforcing those terms.

[12] Mr O'Callaghan said at the time of entering into the ROS he had fully intended to make the payments due under s 4 of it, SPL was in a good operating position. However, SPL subsequently faced cash flow difficulties within a very short period of time due to machinery breakdowns, and there were further issues which also affected its cash flow.

[13] As a result, Mr O'Callaghan said SPL struggled to pay staff and other costs, and the liquidation of SPL occurred on 7 November 2025.

[14] Mr O'Callaghan said that although he has since managed to obtain employment, his personal circumstances are such that he has no assets remaining and has personal financial difficulties.

Has there been compliance with clause 4 of the ROS?

[15] It is submitted for Mr Jenkins there has been no compliance with the terms of the ROS requiring payments to be made by Mr O'Callaghan as itemised in clause 4 (a) and (b) of the ROS.

[16] Mr O'Callaghan confirms that there has been no compliance and that he is unable to effect compliance in the foreseeable future.

[17] Having considered this matter I am satisfied that Mr O'Callaghan has not complied with clause 4 of the ROS.

Remedies

Compliance Order

[18] I am satisfied that the payments itemised in clause 4 (a) and (b) of the ROS were not paid to Mr Jenkins in accordance with the timetables set out in the ROS.

[19] In accordance with clause 4 of the Record of Settlement, the outstanding payments are due and payable.

[20] In order to effect compliance with clause 4 of the Records of Settlement, I therefore order Mr O'Callaghan to pay Mr Jenkins the outstanding amounts due no later than 28 days from the date of this determination.

Interest

[21] I order that Mr O'Callaghan pay interest on the amounts due under clause 4 of the ROS from the date the amounts were due to be paid until they are paid. Interest is payable in accordance with Schedule 2 of the Interest on Money Claims Act 2016. A calculator to assist in the calculation of interest is available on the Ministry of Justice website.

[22] Interest is to be paid within 28 days from the date of this determination,

Penalties

[23] Ms Climo has sought penalties for each breach of the ROS on behalf of Mr Jenkins.

[24] The relevant principles for the Authority to follow when assessing the level of penalty are set out in *ITE v ALA* as being

- To protect the finality and integrity of [s 149](#) settlement agreements by deterring the individual transgressor and others from similar breaches;
- To punish the transgressor;
- Consistency with penalties imposed on others in similar circumstances;
- An assessment of the nature and extent of the breach, including whether it was deliberate, one-off or sustained, with the maximum penalty being reserved for the worst cases;
- Any steps taken by the transgressor to remedy the breach;
- Proportionality in the circumstances.¹

[25] I find that the breaches were the result of an adverse financial situation faced by Mr O’Callaghan and do not result from a deliberate intention not to make the agreed payments.

[26] Nonetheless the amounts were agreed to be made to Mr Jenkins, and he has been put to additional cost in having to apply to the Authority to obtain compliance with an agreement freely entered into by Mr O’Callaghan.

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

[28] 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.

[29] I order Mr O’Callaghan to pay a penalty of \$1,500.00 to the Authority which is to be paid to the Crown Trust Account. Payment is to be made within 28 days of the date of this Determination.

Filing Fee

[30] Mr O’Callaghan must also reimburse Mr Jenkins the filing fee of \$71.56 within 28 days of the date of this Determination.

¹ *ITE v ALA* [2016] NZEmpC 42 at [61]

Costs

[31] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*² that costs are modest. Principles also include that costs are reasonable and that they normally follow the event. I see no reason for not applying these principles in this case.

[32] The matter was considered by means of a short telephone conference, and in the circumstances of this case, I consider that a costs award of \$1,125.00 to be appropriate

[33] Accordingly, Mr O'Callaghan is ordered to pay Mr Jenkins the sum of \$1,125.00 towards his legal costs, pursuant to clause 15 of Schedule 2 of the Act.

Orders

[34] I have made the following orders:

- **Mr O'Callaghan is ordered to pay \$50,000.00 to Mr Jenkins pursuant to clause 4 of the ROS**
- **Mr O'Callaghan is ordered to pay interest on the sum of \$50,000.00 to Mr Jenkins from the dates the payments were due until the payments are made**
- **Mr O'Callaghan is ordered to pay a penalty of \$1,500.00 to the Authority to be paid to the Crown Trust Account.**
- **Mr O'Callaghan is ordered to pay Mr Jenkins \$71.56 in respect of the Authority filing fee.**
- **I order that Mr Ocallaghan pay the sum of \$1,125.00 to Mr Jenkins as a contribution to costs.**
- **All payments are to be made within 28 days of this determination.**

Eleanor Robinson
Member of the Employment Relations

² [2005] 1 ERNZ 808