

mediation. I have decided that any further mediation would not contribute constructively to resolve the matter.

The issues

[4] What is there to enforce?

The facts

[5] I am satisfied that there was a written record of a settlement signed off by the parties and a Department of Labour mediator.

[6] I am also satisfied that there appears to have been payments made by the respondent in accordance with that settlement. With that being the case there is no order to be made on any outstanding payment.

[7] There is a provision under the settlement for liquidated damages on proof of a breach. There was an exception provided that included any delay due to the intervention of a weekend or public holiday or error attributable to the banking system and not the respondent. On the material before me there is no proof of any damage caused by any delay in the payment. Nor is there any proof that the respondent deliberately, wilfully or maliciously acted to breach the settlement when it has supported making transfer payments electronically on time. The documents support transfers being made with the bank on time to meet the requirements of the settlement. Any delays after that occurred within the banking system. Therefore, there is nothing further for me to proceed with.

Determination

[8] The applicant's request for the liquidated damages clause to be invoked is declined. The employment relationship problem is therefore closed.

[9] There will be no order for costs since both parties were not represented by a lawyer or advocate and because the applicant brought the matter prematurely before

the Authority without good cause considering the payment transactions had been made by the respondent.

[10] It is my decision that costs are to lie where they fall.

P R Stapp
Member of the Employment Relations Authority