

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2021] NZERA 227  
3133018

BETWEEN                      ARASH KHOMEINI  
   Applicant  
  
A N D                              RAJESH THAKUR  
   Respondent

Member of Authority:              Peter van Keulen  
  
Representatives:                      Applicant in person  
   No appearance for the Respondent  
  
Investigation Meeting:              25 May 2021  
  
Submissions Received:              25 May 2021 for the Applicant  
  
Date of Determination:              25 May 2021

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**DETERMINATION OF THE AUTHORITY**

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**This determination is a written record of an oral determination delivered on 25 May 2021.**

**Employment relationship problem**

[1]      Arash Khomeini and Rajesh Thakur signed a record of settlement on 19 January 2021. A mediator from the Mediation Services of the Ministry of Business Innovation and

Employment signed the record of settlement, pursuant to s 149 of the Employment Relations Act 2000 (the “Act”).

[2] Mr Khomeini’s claim, lodged in the Authority, alleges that Mr Thakur has not complied with clause 1 of the Record of Settlement as he has not paid the agreed lump sum payment by the prescribed deadline.

[3] Mr Khomeini seeks a compliance order, a penalty and costs for the breach by Mr Thakur.

### **Progress of this matter**

[4] Mr Khomeini’s statement of problem was served on Mr Thakur but he did not respond to it by lodging and serving a statement in reply. Mr Thakur was then notified of the case management conference that the Authority scheduled to progress this matter, however, Mr Thakur did not participate in the case management conference.

[5] In the case management conference I set this matter down for an investigation meeting and Mr Thakur was subsequently served with a notice of investigation meeting which set out the date and time for the investigation meeting.

[6] So, Mr Thakur was aware of the date and time of the investigation meeting and he should have attended but he did not make himself available. And, he did not contact the Authority to explain why he could not or would not attend.

[7] The notice of investigation meeting advised Mr Thakur that if he chose not to participate in the investigation meeting then the claim by Mr Khomeini would be determined in his absence. So, Mr Thakur was aware that I would proceed if he did not participate in the investigation meeting.

[8] Considering all of the above, there was no apparent reason why the investigation meeting could not continue without Mr Thakur. I therefore proceeded with the investigation meeting pursuant to clause 12 of Schedule 2 of the Act.

### **Facts giving rise to this claim**

[9] Mr Khomeini and Mr Thakur had an employment relationship problem which they resolved. The parties reached an agreement in full and final settlement, which was recorded in the Record of Settlement.

[10] Clause 1 of the Record of Settlement provides that Mr Thakur was to pay Mr Khomeini \$7,500.00 pursuant to s 123(1)(c) of the Act by 18 February 2021.

[11] Mr Thakur did not pay Mr Khomeini \$7,500.00 by 18 February 2021. Mr Khomeini followed up on the overdue payment and received two separate emails advising that the payment would be made. The first said payment would be made by the end of February and the second (after the end of February) then said payment would be made in two weeks.

[12] Despite the assurances of payment being made, Mr Khomeini has not been paid the \$7,500.00 he is owed.

### **Has Mr Thakur breached the record of settlement?**

[13] Mr Thakur has breached the Record of Settlement by not making the payment as set out in clause 1.

### **Is it appropriate to make a compliance order?**

[14] As Mr Thakur has breached the record of settlement a compliance order is necessary. I will make an order for compliance pursuant to s 137(2) of the Act.

[15] Mr Thakur must comply with clause 1 of the Record of Settlement by paying Mr Khomeini \$7,500.00 immediately.

### **Should I impose a penalty against Mr Thakur?**

[16] Given Mr Thakur's breach of the Records of Settlement I consider it appropriate to impose a penalty against him. In assessing the quantum of this penalty I have considered the relevant factors set out at s 133A of the Act and looked at the range of penalties awarded in similar cases. Based on this I conclude that the appropriate penalty is \$1,000.00 and I also conclude that this penalty should be paid to Mr Khomeini in order to compensate him for some of the inconvenience, distress and cost he has suffered or incurred through Mr Thakur not meeting his obligations.

### **Costs**

[17] Mr Thakur must also pay \$71.56 for the filing fee on the statement of problem.

### **Orders**

[18] Mr Thakur Ltd has breached the Record of Settlement as it failed to make the payment set out at clause 1.

[19] Mr Thakur must comply with clause 1 of the Record of Settlement by paying \$7,500.00 immediately.

[20] I impose a penalty of \$1,000.00 against Mr Thakur and order that this amount be paid directly to Mr Khomeini.

[21] Mr Thakur must pay Mr Khomeini \$71.56 for the filing fee in this matter.

Peter van Keulen  
Member of the Employment Relations Authority