

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI Ā TARA ROHE**

[2023] NZERA 105  
3190919

BETWEEN                      CATHRIN KRUG  
Applicant

AND                              HG HOTELS LIMITED  
Respondent

Member of Authority:        Shane Kinley

Representatives:              Alex Kersjes, advocate for the Applicant  
No appearance for the Respondent

Investigation Meeting:        On the papers

Determination:                6 March 2023

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Cathrin Krug claims that HG Hotels Limited (HGH) has failed to honour the terms and conditions of a record of settlement (RoS) which she entered into with the HGH on 30 June 2022. The RoS was certified by a Ministry of Business, Innovation and Employment (MBIE) mediator on that date.

[2] The RoS required, inter alia, that HGH:

- (a) pay Ms Krug the sum of \$8,000 in terms of the provision of s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act), within 14 days of the RoS being certified; and
- (b) contribute a sum not exceeding \$4,000 plus GST towards Ms Krug's representative costs, on receipt of a tax invoice for that amount.

[3] HGH paid Ms Krug as required under [2](a) on 4 August 2022. Despite numerous attempts to contact HGH to arrange payment of the amount required under [2](b), this amount remained unpaid, leading to this employment relationship problem.

### **The Authority's investigation**

[4] In investigating this employment relationship problem, a case management conference was held on 10 January 2023, which was attended by Ms Krug's representative Mr Kersjes. There was no appearance for HGH. Due to earlier correspondence between the Authority and Malcolm Herbert (one of HGH's two directors) I was satisfied Mr Herbert was made aware of the time and date of the conference. Given the above, the conference proceeded in the respondent's absence.

[5] During the case management conference, I directed Ms Krug lodge a written statement with the Authority by 31 January 2023 along with any other evidence on her behalf (particularly addressing the issue of costs), which she did.

[6] I also provided HGH with a final opportunity to engage with this matter, by lodging any application for leave to reply or respond to this matter, along with an intended statement in reply and any documents relevant to this matter by 24 January 2023.

[7] Mr Herbert acknowledged receipt of an email from the Authority and confirmed the email address that correspondence could be sent to on 12 January 2023. I am satisfied that Mr Herbert, on behalf of HGH, has been made aware of the timetable for the Authority's investigation. No further response was received from emails to Mr Herbert.

[8] I directed that this matter would be determined on the papers without the need for an in-person investigation meeting. For the Authority's investigation a statement of problem was received on behalf of Ms Krug, written witness statements were lodged from Ms Krug and Mr Kersjes, and written submissions were provided on behalf of Ms Krug. I was provided with a copy of the RoS.

[9] No submissions were received from HGH. I am satisfied that HGH is aware of the present proceedings and that they have been given a fair and reasonable opportunity to respond. The Authority has the power to proceed if any party fails to attend.<sup>1</sup>

[10] 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.

### **The issues**

[11] The issues requiring investigation and determination were:

- (a) Has the RoS been breached?
- (b) If so, should a compliance order be made?
- (c) In addition to any compliance order, what remedies, expenses and costs should be awarded?

### **The RoS has been breached**

[12] The written witness statements from Ms Krug and Mr Kersjes, and written submissions on behalf of Ms Krug set out the relevant facts. On 30 June 2022 Ms Krug and HGH entered a RoS, as described in [2]. While payment was made to Ms Krug, payment of the contribution of a sum not exceeding \$4,000 plus GST towards Ms Krug's representative costs has not occurred, despite numerous efforts to contact HGH and Mr Herbert to arrange this. I am satisfied that the conditions required for this payment have been satisfied, this amount is due and find there have been multiple and sustained breaches of the RoS by HGH.

### **A compliance order is appropriate**

[13] In light of the evidence and information before me, and there being nothing provided by HGH and Mr Herbert to the contrary, I am satisfied that a compliance order should be made in Ms Krug's favour.

### **Orders**

[14] I find HGH has breached its obligations under the RoS. I order that HGH pay Kathrin Krug the amount of \$4,000 plus GST immediately and without delay.

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<sup>1</sup> Employment Relations Act 2000, Schedule 2, clause 12.

## Costs

[15] In submissions on behalf of Ms Krug, her representative states she has incurred additional costs of nearly \$2,000 to enforce the RoS. Costs follow the event and the Authority's tariff-based system as a starting point for awarding costs is well known.<sup>2</sup>

[16] I was provided an invoice for the costs of \$206 including GST for serving documents on HGH and Mr Herbert, which I consider is reasonable to award reimbursement of. It is also appropriate to order HGH reimburse Ms Krug the filing fee of \$71.56. These amounts are to be paid no later than 4 pm Monday 20 March 2023.

[17] I was not, however, provided with any evidence by way of invoices to support the submissions about the level of additional representative costs that Ms Krug has incurred to enforce the RoS. Ms Krug's witness statement states (in relation to HGH's non-compliance with the RoS):

This is causing me great strain and upset. I just want this to be over and it is unfair for this to be dragged out and to be continued on.

My Representative has worked hard to resolve the matter for me and now they have to do further work for the employer to pay my costs it is unfair and not right.

[18] I consider a quarter of the first-day tariff (\$1,125) to be an appropriate starting point in this case. I am satisfied, based on submissions that there has been a lack of engagement from HGH and Mr Herbert, that this is a case where I should apply a modest uplift and award costs of \$1,500 to Ms Krug.

[19] HGH are ordered to pay Ms Krug the sum of \$1,500 towards her representative costs pursuant to clause 15 of Schedule 2 of the Act no later than 4 pm Monday 20 March 2023

Shane Kinley  
Member of the Employment Relations Authority

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<sup>2</sup> See [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies).