

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 163
3135420

BETWEEN	ERONI KURUMAIRA Applicant
AND	NURALITE WATERPROOFING LIMITED Respondent

Member of Authority:	Vicki Campbell
Representatives:	Mike Harrison, advocate for Applicant John Simmons for Respondent
Investigation Meeting:	On the papers
Determination:	22 April 2021

DETERMINATION OF THE AUTHORITY

**A. Mr Kurumaira's application for compliance orders, penalties
and interest is declined.**

Employment relationship problem

[1] Mr Kurumaira was employed by Nuralite Waterproofing Limited (Nuralite). After the employment relationship ended Mr Kurumaira challenged the termination of his employment and raised a personal grievance for unjustified dismissal.

[2] Mr Kurumaira, Nuralite and Lowie Recruitment International Limited (Lowie) entered into a record of settlement on 10 March 2021. The record of settlement was certified under s 149 of the Employment Relations Act 2000 (the Act) by a Mediator employed by the Ministry of Business, Innovation and Employment. This certification confirmed that, the parties were advised, accepted and understood the terms contained in the record of settlement:

- a) were final, binding and enforceable;
- 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.

[3] The record of settlement required the payment of a sum of money in equal shares by Nuralite and Lowie. The payment was for compensation under s 123(1)(c)(i) of the Act and a contribution to Mr Kurumaira's costs on the production of an invoice, again in equal shares by both Nuralite and Lowie. The payments were due to be paid on 22 March 2021. Lowie met its obligations and paid the amount due, however, Nuralite did not.

[4] Despite following up with Nuralite the payments remained outstanding until 25 March 2021 (a period of three days). Mr Kurumaira lodged this application that same day seeking compliance orders, penalties, interest and a contribution to his costs.

[5] During a case management call with the parties on 21 April 2021 Mr Harrison confirmed the sums payable under the record of settlement had been paid. The parties consented to this matter being dealt with on the papers which include the statements of problem and in reply and the associated documents.

[6] As permitted by s 174E of 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 as a result. While I have not referred in this determination to all the information received I have carefully considered all relevant material lodged with the Authority.

Issues

[7] In order to resolve Mr Kurumaira's application I must determine the following questions:

- (a) Did Nuralite breach the terms of the record of settlement?
- (b) If so should compliance orders be made?
- (c) Should penalties be imposed?

(d) Should interest on the outstanding money be awarded?

(e) Should either party contribute to the costs of representation of the other party?

Did Nuralite breach the terms of the record of settlement?

[8] It is clear Nuralite breached the terms of the record of settlement when it failed to pay the sums payable to Mr Kurumaira by the due date. Nuralite has provided emails to show that there were difficulties with the bank details provided by Mr Kurumaira which were resolved on 25 March 2021. At that time full payment was made in accordance with the terms of the record of settlement.

Should compliance orders be made?

[9] The public interest in having terms of a record of settlement, made and certified in mediation, honoured by the parties to that record of settlement favours an order for compliance. However, in this case it is not appropriate to exercise my discretion and make a compliance order.¹

[10] Mr Kurumaira seems to have acted pre-emptively after being told, on receipt of the correct bank details, that payment would be made immediately, and it was. In these circumstances a compliance order is unnecessary.

[11] Mr Kurumaira's application for a compliance order is declined.

Should penalties be imposed?

[12] The Act includes provisions encouraging parties to resolve their employment relationship problems between themselves. The record of settlement represents such a resolution. The failure by one party to honour the terms of a resulting agreement is a serious matter.

[13] Public confidence in records of settlement 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.

¹ Employment Relations Act 2000, s 137(2).

[14] While Nuralite breached the record of settlement it was quickly rectified and no further breaches have occurred. In the circumstances of this case it is not appropriate to impose a penalty and Mr Kurumaira's application for a penalty is declined.

Interest

[15] Mr Kurumaira seeks interest for the period during which the sums payable under the terms of the record of settlement remained outstanding.

[16] There is no doubt that Mr Kurumaira was entitled to receive the fruits of his agreement. However, the reason for the monies not being paid on 22 March 2022 was due to confusion about the correct bank account details for payment. There is no evidence or suggestion that Nuralite purposefully withheld payment or were acting to circumvent the terms of the record of settlement.

[17] Mr Kurumaira's application for interest is declined.

Costs

[18] The company was represented by Mr Simmons a director of Nuralite and no issue as to costs has been raised. Accordingly no order for costs will be made.

Vicki Campbell
Member of the Employment Relations Authority