

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 390
3341340

BETWEEN DAYMON LAMBERT
Applicant

AND EXPERT GROUP LIMITED
Respondent

Member of Authority: Jeremy Lynch

Representatives: David Reeves, counsel for the Applicant
Zabiullah Sharif for the Respondent

Investigation Meeting: On the papers

Information provided: 27 May and 3 July 2025 from the Applicant
No further information received from the Respondent

Determination: 3 July 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] By way of a compliance order, Daymon Lambert seeks to enforce a record of settlement (ROS) entered into with his former employer, Expert IT Group Limited (Expert) and certified by a mediator. Mr Lambert does not bring a penalty application, but he does seek an order as to costs.

[2] By its statement in reply, Expert acknowledges its non-compliance with the ROS. It says it has been unable to meet its obligations in respect of payment, due to the financial circumstances the business is currently facing. It seeks an instalment plan spread over 12 months within which to pay Mr Lambert the outstanding balance.

The Authority's investigation

[3] A case management was held with the parties on 21 February 2025 (the CMC), at which the parties consented to this matter being determined 'on the papers', and to

timetable directions as to the lodging of affidavits and submissions.

[4] Despite agreeing to the timetable, Expert has failed to comply.

[5] Expert was to have lodged its sworn or affirmed affidavit evidence by 14 March 2025, but did not do so.

[6] On 19 March 2025, and without seeking an extension from the Authority, Expert lodged a document headed *Memorandum of Respondent*, which it said was its affidavit. The document was not sworn or affirmed.

[7] Despite the Authority reminding Expert of the requirement to have the affidavit sworn or affirmed, Expert changed the heading of the document to *Affidavit in Reply to Applicant* and lodged it again on 20 March 2025. However, the document was still not sworn or affirmed.

[8] The Authority again reminded Expert that the document needed to be sworn or affirmed, and referred Expert to the written directions issued to the parties following the CMC, which set out the requirements of the parties' affidavit evidence.

[9] The Authority then made multiple requests of Expert to provide an update as to if and when it would be lodging a sworn or affirmed affidavit. These requests went largely unanswered.

[10] At the CMC, timetable directions had been made for Mr Lambert to lodge a reply affidavit. The effect of Expert's non-compliance with the timetable directions, and its unresponsiveness to correspondence from the Authority, was that Mr Lambert was unable to lodge his further affidavit or submissions, or have any certainty as to what (if any) further engagement there would be from Expert in the proceeding.

[11] Eventually an Authority Officer managed to reach Expert's director and representative Zabiullah Sharif by telephone. Mr Sharif advised that Expert would lodge a sworn or affirmed affidavit by the end of the week commencing 21 April 2025. This did not occur.

[12] Expert's affirmed affidavit was lodged on 1 May 2025.

[13] Mr Lambert promptly lodged his reply affidavit on 8 May 2025.

[14] Despite the Authority amending the remainder of the timetable (with Mr

Lambert's consent) to provide Expert the opportunity to lodge closing submissions, it did not lodge any submissions, nor advise the Authority it would not be lodging submissions.

[15] On 27 May 2025, counsel for Mr Lambert wrote to the Authority noting that no submissions had been lodged by Expert, and advising that Mr Lambert would not be lodging submissions, instead preferring to rely on the contents of his affidavit evidence.

[16] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination has not recorded everything received from the parties, but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

[17] The Authority has carefully considered all the material provided.

The issues

[18] The issues for investigation and determination are:

- (a) whether Expert has breached the parties' ROS, by not complying with its obligations under cl 2 in respect of compensation payments?
- (b) If so, whether a compliance order should be made against Expert, under s 137 of the Employment Relations Act 2000 (the Act), to comply with the parties' ROS?
- (c) Should either party be required to contribute to the other's costs?

The Record of Settlement

[19] The ROS lists the parties to the agreement as being Mr Lambert and Expert.

[20] Clause 2 of the ROS provides that Expert is to pay to Mr Lambert the sum of \$30,000.00 by way of three equal instalments:

- (a) \$10,000.00 no later than 31 July 2024;
- (b) a further \$10,000.00 no later than 31 August 2024;
- (c) the final \$10,000.00 no later than 30 September 2024.

[21] The ROS provides that the terms and conditions of the parties' agreement are final and binding, but may be brought before the Authority for enforcement purposes.

[22] As at the date of the lodging of his statement of problem in the Authority (some two months after the final instalment payment should have been made), Mr Lambert said he was still yet to receive \$8,500.00 of the agreed total of \$30,000.00.

[23] Since he lodged his statement of problem, Expert appears to have made further payments towards the outstanding balance.

[24] Mr Lambert's affidavit of 27 February 2025 deposes that he has received \$22,000.00 from Expert, leaving a balance outstanding of \$8,000.00.

[25] On 6 May 2025, Mr Sharif emailed the Authority and Mr Lambert's counsel, advising that a further \$700.00 had been paid towards the outstanding amount. Mr Lambert's reply affidavit of 8 May 2025 sets out that Expert has now paid a total of \$24,700.00, leaving an outstanding balance of \$5,300.00.

[26] On 3 July 2025, through counsel Mr Lambert advised the Authority that no further payment had been received from Expert since that referred to in his 8 May 2025 affidavit, and that the sum of \$5,300.00 remains outstanding.

Affidavit of Zabiullah Sharif

[27] Mr Sharif's affidavit sets out that:

We believe this entire legal pursuit is motivated by [Mr Lambert's] intent to "teach me a lesson" rather than a genuine financial hardship claim.

Despite this we remain committed to settling the outstanding balance ... we have proposed a monthly payment of \$500, allowing us to manage our financial obligations effectively

[28] The Authority observes that regardless of what Expert perceives his motivation to be, Mr Lambert is entitled to be paid the sums agreed under the ROS. It is not Mr Lambert's fault that Expert has not met its obligations.

[29] In its statement in reply, Expert accepts that it has not complied with its obligations under the ROS.

[30] Expert is in clear breach of the ROS.

Compliance order

[31] Section 137(1)(iii) of the Act empowers the Authority to order a party to comply with any terms of settlement that s 151 provides may be enforced by a compliance

order. Section 151 of the Act applies to any agreed terms of settlement enforceable by the parties under s 149(3) of the Act. The effect of s 151 is that any agreed terms of settlement that are enforceable by the parties under s 149(3) (such as the ROS), may be enforced by way of a compliance order.

[32] Expert has failed to comply with the terms of the ROS. It is appropriate for the Authority to exercise its discretion under s 137(2) of the Act to order compliance with the sums outstanding.

[33] Within 28 days of the date of this determination, Expert is ordered to comply with the provisions of cl 2 of the parties' ROS, and make payment to Mr Lambert of the outstanding sum of \$5,300.00, without deduction.

[34] The imposition of a compliance order is a serious matter. Should Expert fail to comply with the compliance order as set out above, Mr Lambert is entitled to pursue such a breach in the Employment Court or the District Court.

[35] The Employment Court has powers to impose a fine not exceeding \$40,000.00, order property to be sequestered, or impose a sentence of imprisonment not exceeding three months.¹ Alternatively, a certificate of determination may be obtained from the Authority and enforcement obtained in the District Court.

Interest

[36] The Authority has the power to award interest under cl 11 of the Second Schedule of the Act. Interest is to reimburse someone for the loss of the use of monies to which there is an established entitlement.

[37] Where a person has been deprived of the use of money, it is appropriate that the Authority makes an award for interest. Expert is ordered to calculate and pay interest on the outstanding sum.

[38] Interest is to be calculated from the date of this determination, until the outstanding sum of \$5,300.00 is paid in full. Interest is payable in accordance with Schedule 2 to the Interest on Money Claims Act 2016, and is to be calculated using the civil debt interest calculator available on the Ministry of Justice website.²

¹ Employment Relations Act 2000, ss 139 and 140(6).

² <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>

Liability against Mr Sharif in his personal capacity

[39] Mr Lambert's affidavit of 27 February 2025 sets out:

I have no doubt Mr Sharif could easily come up with the money, and I seek that the Authority consider whether it can make the [compliance] order against Mr Sharif as the sole director and shareholder of the respondent.

[40] Under s 221(a) the Authority may join a party to the proceeding in order to make a compliance order against them.³

[41] However, this was not a claim included in Mr Lambert's statement of problem, and as such was not addressed by Expert in its statement in reply.

[42] Other than the request for an order against Mr Sharif in his personal capacity set out in Mr Lambert's affidavit, he did not further advance this claim. No submissions were made in support of this, and despite the claim that Mr Sharif "could easily come up with the money", no evidence of this was provided.

[43] Mr Sharif is not a party to the ROS, and there is no evidence that he provided a personal guarantee that he would meet Expert's obligations in the event of default.

[44] The Authority declines to make orders against Mr Sharif in his personal capacity.

Payment by instalments

[45] Expert's statement in reply seeks an order that the outstanding balance be paid by instalments over a 12 month period. The reason given for this is the financial circumstances of the business.

[46] In support of this, attached to Mr Sharif's affidavit is a profit and loss report solely for the month of March 2025. This was the only evidence provided in support of Expert's request to pay in instalments. The Authority is unable to make an accurate assessment of Expert's financial position solely on the basis of the financial report for one month's trading.

[47] The information before the Authority in support of Expert's financial position

³ *New Zealand Performance and Entertainment Worker' Union v Infrast Holdings Limited (LC)*
Auckland ALC85/90, 26 July 1990.

is insufficient to justify an order for instalment payment. The request is declined.

Summary

[48] The Authority orders Expert IT Group Limited, within 28 days of the date of this determination:

- (a) to pay to Daymon Lambert the outstanding settlement sum of \$5,300.00 without deduction; and
- (b) to calculate and pay interest on the outstanding settlement sum in accordance with [38] above.

Costs

[49] Mr Lambert has incurred costs in seeking to enforce the ROS. He is the successful party, and as such is entitled to a contribution towards his representation costs.

[50] When the Authority considers costs, it exercises a discretion. In exercising that discretion, it does so in a principled way.⁴ Costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct. Costs in the Authority are usually awarded on the basis of a daily tariff, which is currently \$4500 for the first day.⁵ This matter was able to be investigated on the papers, without the need for an investigation meeting.

[51] Mr Lambert's affidavit of 8 May 2025 attaches an invoice for his representation costs in respect of this proceeding. Mr Lambert claims the total sum of \$1483.50. This is less than half the daily tariff (which is often the starting point for the Authority's assessment of a costs award following an investigation undertaken on the papers).

[52] Given Mr Lambert was required to lodge a statement of problem, two affirmed affidavits, and to correspond with the Authority (including in respect of timetable variations) during the course of this matter, I am satisfied that the invoice is reasonable.

⁴ *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808, and *Fagotti v Acme and Co Limited* [2015] NZEmpC 135.

⁵ Employment Relations Authority Te Ratonga Ahumana Taimahi *Practice Direction* <https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>.

[53] As the successful party, Mr Lambert is entitled to a contribution to the costs of representation he has incurred in seeking compliance with the ROS. The sum of \$1483.50 is a fair and reasonable award of costs. In addition, it is reasonable that Mr Lambert is reimbursed for the cost of the filing fee of \$71.55 he paid to commence this proceeding.

[54] Within 28 days of the date of this determination, Expert IT Group Limited is to pay to Daymon Lambert the sum of \$1483.50 as a contribution towards his representation costs, together with an additional sum of \$71.55 being reimbursement of the filing fee paid to commence this proceeding.

[55] Expert IT Group Limited is ordered to pay interest on any part of the costs and filing fee reimbursement awarded at [54] above, not fully paid to Daymon Lambert within 28 days of the date of this determination.

[56] Interest is payable in accordance with Schedule 2 to the Interest on Money Claims Act 2016, and is to be calculated using the civil debt interest calculator available on the Ministry of Justice website,⁶ until the full amount of the costs awarded to Mr Lambert, has been paid.

Jeremy Lynch
Member of the Employment Relations Authority

⁶ Above n 2.