

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 651  
3364663

BETWEEN                      HENGXING LI  
Applicant  
  
AND                              ARRIA NLG (NZ) LIMITED  
Respondent

Member of Authority:        Eleanor Robinson  
  
Representatives:              Kate Tennant, counsel for the Applicant  
   Thomas Makeig, counsel for the Respondent  
  
Investigation Meeting:        7 October 2025 in Auckland  
  
Submissions and/or further    7 October 2025 from the Applicant and from the  
evidence                            Respondent  
  
Determination:                16 October 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The Applicant, Hengxing Li, claims that the Respondent, Arria NLG (NZ) Limited (Arria) breached the agreed terms of settlement between them.

[2]     Arria confirms that it has not fulfilled all the agreed terms.

**The Authority's investigation**

[3]     The Authority received written and, under oath or affirmation, oral evidence from Hengxing Li and a chartered accountant on behalf of the Applicant. There were no witnesses for the Respondent.

[4]     Oral and written submissions were received from Ms Tennant for the Applicant and from Mr Makeig for the Respondent. Whilst I have not referred to all the submissions made by the parties, I have fully considered them.

[5]     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.

### **Issue**

[6] The issue requiring investigation is whether or not Arria breached the agreed terms of settlement reached between it and Mr Li.

### **Background**

[7] In September 2024 Mr Li lodged a Statement of Problem in the Authority claiming that he had been constructively dismissed and unjustifiably disadvantaged by Arria. He further claimed that Arria had breached his employment agreement, the Holidays Act 2003 and the Wages Protection Act 1983.

[8] The parties attended mediation, but they did not resolve the matter during mediation.

[9] In November 2024 following mediation, the parties entered into an agreement to resolve various claims Mr Li had raised against Arria. The agreement was between Mr Li, Arria as the First Respondent and two others as the Second and Third Respondents. It was signed by Mr Li on 4 November 2024 and by the three Respondents on 1 November 2024 (the Settlement Agreement).

[10] The Settlement Agreement contained the following clauses:

1. The Applicant will withdraw Application 3302340 from the Employment Relations Authority with no issue as to costs within one week of the Agreement being signed by the parties.
2. The First Respondent will pay the Applicant \$89,776.23 (gross) in unpaid wages and holiday pay, to be paid as follows:

<b>Amount</b>	<b>Due Date</b>
\$10,000	30 November 2024
\$10,000	31 December 2024
\$10,000	31 January 2025
\$10,000	28 February 2025
\$10,000	31 March 2025
\$10,000	30 April 2025
\$10,000	30 May 2025
\$10,000	30 June 2025
\$9,776.23	31 July 2025

3. Within fourteen (14) days of this Agreement being signed by all parties, the First Respondent shall, without admission of liability, pay the Applicant compensation in the sum of \$20,000 (without deduction) pursuant to section 123(1)(c)(i) of the Employment Relations Act 2000.

4. The First Respondent will pay a contribution of \$10,000 plus GST toward the Applicant's legal costs within fourteen (14) days of receiving a GST invoice from Edwards Sluiters Employment Lawyers.
7. This Agreement is in full and final settlement of all claims (including Application 3302340), issues, matters and/or disputes either party has or may have against the other arising out of the employment relationship and the termination thereof.
9. The parties have taken or have had a reasonable opportunity to take independent legal advice as to the meaning and the terms of this Agreement. ....

[11] Mr Li confirmed that he had been advised by his lawyer during the negotiations which resulted in the Settlement Agreement.

[12] On 18 November 2024, in accordance with clause 1 of the Settlement Agreement, Mr Li advised the Authority that he was withdrawing his application because the matter had been settled.

[13] On 13 March 2025 Mr Li lodged a new Statement of Problem in the Authority claiming that Arria was in breach of the Settlement Agreement.

#### *Nature of the breach*

[14] Mr Li said that Arria paid the compensation amount and the legal costs contribution, but a few days late. The first payment, an instalment of \$10,000 gross in respect of unpaid wages and holiday pay due on 30 November 2024, was paid, however the second instalment due on 31 December 2024 was not paid until 3 February 2025. The remaining instalments had not been paid at all.

[15] Mr Li said it had been his intention to use the payments from Arria under the Settlement Agreement to make additional lump sum payments on his mortgage repayments. He had engaged a chartered accountant to calculate the financial loss of his not having made the additional mortgage repayments on the interest rate charged.

[16] The Chartered Accountant said he had based his calculations on Mr Li paying the full instalment amounts after PAYE and KiwiSaver deductions to calculate the effect of such additional mortgage payments over the 30 year life of the mortgage.

#### **Did Arria breach the Settlement Agreement?**

[17] Mr Makeig on behalf of Arria acknowledged that Arria had breached clause 2 of the Settlement Agreement by making the second instalment payment late and by failing to make the remaining payments.

[18] Mr Makeig submitted that Arria has ceased trading but its intention is to address its obligations in respect of the Settlement Agreement.

[19] Employment disputes are frequently resolved by means of confidential settlement agreements between the parties which are then sent or subsequently signed and certified by a mediator pursuant to s 149 of the Employment Relations Act 2000 (the Act).

[20] In this case Mr Li's evidence was that following mediation the parties had chosen to discuss the matter between themselves, and a basis for agreement had been reached without the assistance of a mediator. Nor had the assistance of a mediator been sought following the discussion to certify the agreement they had reached.

[21] In *Cabletalk Astute Network Services Limited v Cunningham* Judge Shaw set out the classic definition of accord and satisfaction, defined in the case of *British Russian Gazette and Trade Outlook Ltd v Associated Newspapers Ltd* as:<sup>1</sup>

Accord and satisfaction is the purchase of a release from an obligation, whether arising under contract or tort, by means of valuable consideration, not being the actual performance of the obligation itself.

[22] Chief Judge Colgan in the key case on accord and satisfaction, *Graham v Crestline Pty Limited*, explained that:<sup>2</sup>

whether accord and satisfaction has been made is a question of fact requiring a finding of a meeting of the parties' minds or that one of them must act in such a way as to induce the other to think that money (or other consideration) is taken in satisfaction of the claim.

[23] In this case, as part of the Settlement Agreement Mr Li had agreed to withdraw his application in respect of his claims lodged with the Authority. Arria as part of the Settlement Agreement agreed to pay Mr Li monies in respect of unpaid wages and holiday pay, compensation and costs.

[24] Whilst the Settlement Agreement was not certified by a mediator, I note that Arria affirmed the agreement by making the first two payments of \$10,000, the amount due as compensation and the amount due as costs, albeit later than agreed, Mr Li had written to the Authority and withdrawn his application against Arria. This was as intended pursuant to clauses 1, 2 3 and 4 of the Settlement Agreement.

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<sup>1</sup> *Cabletalk Astute Network Services Limited v Cunningham I*[2004] 1 ERNZ 506; *British Russian Gazette and Trade Outlook Ltd v Associated Newspapers Ltd* [1933] 2 KB 616, at 643 – 644

<sup>2</sup> *Graham v Crestline Pty Limited* [2006] ERNZ 848.

[25] Arria acknowledges that the remaining payments in respect of unpaid wages and holiday pay are due and owing to Mr Li.

[26] I find that the Settlement Agreement represents a meeting of minds. Mr Li would receive 'valuable consideration' because he would receive the outstanding wage and holiday payment, compensation and costs payments due to him.

[27] For Arria under the terms of the Settlement Agreement it avoided the possibility of Mr Li taking action in the Authority in respect of his claims against it (of constructive dismissal, unjustifiable disadvantage and for breaches of his employment agreement, the Holidays Act 2003 and the Wages Protection Act 1983).

[28] As such the valuable consideration gained by Mr Li constituted 'the purchase of a release from an obligation' by Arria. This was set out in the Settlement Agreement in clause 7 which stated that it was in: "full and final settlement of all claims, issues, matters and/or disputes" between them.

[29] I find that there would be, and indeed was, a real benefit to both parties in entering into the Settlement Agreement.

[30] In accordance with the terms of the Settlement Agreement I find that Arria affirmed the terms of it by making the first two payments under clause 2 and the payments pursuant to clauses 3 and 4.

[31] I determine that there was accord and satisfaction such that the Settlement Agreement is binding on the parties.

**Should a Compliance Order be made?**

[32] The Settlement Agreement refers in clause 2 to the dates when the payment of the sums of outstanding unpaid wages and holiday pay agreed to be paid should have been made. I find that the payment has not been made in full, with Arria still owing Mr Li the sum of \$69,776.23 gross.

[33] From the evidence available to the Authority, I am satisfied that Arria has failed to comply with clause 2 of the Settlement Agreement.

[34] Mr Li said that that as a result of the breach of the Settlement Agreement by Arria, he had suffered stress and had to borrow money from family and friends to meet living expenses until he managed to obtain other employment.

[35] In order to effect compliance with the Settlement Agreement, I therefore order Arria to pay Mr Li, no later than 21 days from the date of this determination, the remaining balance of monies in the sum of \$69,776.23 gross pursuant to s 137(2) and (3) of the Act.

### **Interest**

[36] The Authority may order interest to be paid in any matter involving the recovery of any money pursuant to clause 11 of Schedule 2 to the Act.

[37] The purpose of interest is to reimburse someone for the loss of use of monies to which there is established entitlement as is the case with Mr Li. I consider it appropriate therefore to award Mr Li interest on the amounts agreed to be paid under clause 2 of the Settlement Agreement which have not been paid and still outstanding.

[38] Interest is also merited in the circumstances in which payment was made under clauses 2, 3 and 4, but after the agreed dates when they should have been made.

[39] Arria is ordered to calculate and pay interest to Mr Li within 21 days of the date of this determination on the sums for which payment has been ordered from the dates when they were agreed to be paid until they were, or are, paid in full.

[40] Interest is payable in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

### **Should damages be awarded to Mr Li?**

[41] In this case, the parties chose not to have the Settlement Agreement certified by a mediator and so it not been signed by the person empowered to do so, and therefore no penalty can be ordered pursuant to s.149 (4) of the Act.

[42] Mr Li has claimed damages in the amount of \$141,278.72 representing financial loss, and alleges he suffered harm as a result of not being able to make additional payments on his mortgage.

[43] His evidence did not establish that losses at that level necessarily resulted from Arria's breaches of their settlement. The connection was too speculative to support the conclusion he sought.

[44] Also the Settlement Agreement had no clause providing for a damages claim in the event of non-performance of its terms.

[45] Both parties were legally represented. I find that it was open to them to have inserted and agreed a clause providing for consequences of any default in the agreed terms at the time the Settlement Agreement was been drafted.. I observe that such a provision in the event of a default is frequently to be found in settlement agreements reached under s 149 of the Act.

[46] In the circumstances I find no basis in the terms of the Settlement Agreement supporting a basis for making an award of damages in this matter.

### **Costs**

[47] This matter lasted less than half a day.

[48] I consider it appropriate to order costs in the amount of \$1750.00

[49] Arria is ordered to pay Mr Li the sum of \$1,750.00 as a contribution towards his legal costs. pursuant to clause 15 of Schedule 2 of the Act.

[50] Arria is ordered to reimburse Mr Li the Authority filing fee in the sum of \$71.55.

### **Summary of Orders**

- **Arria is ordered to pay Mr Li, no later than 21 days from the date of this determination, the remaining balance of monies in the sum of \$69,776.23 gross pursuant to s 137(2) and (3) of the Act.**
- **Arria is ordered to calculate and pay interest to Mr Li within 14 days of the date of this determination on the sums for which payment has been ordered from the dates when they were agreed to be paid until they were, or are, paid in full.**
- **Arria is ordered to pay Mr Li the sum of \$1,750.00 as a contribution towards his legal costs. pursuant to clause 15 of Schedule 2 of the Act.**
- **Arria is ordered to pay Mr Li the Authority filing fee in the sum of \$71.55.**