



# New Zealand Employment Relations Authority Decisions

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## Lockett v Outa Boundz Limited (Auckland) [2018] NZERA 207; [2018] NZERA Auckland 207 (29 June 2018)

Last Updated: 13 July 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2018] NZERA Auckland 207  
3029792

BETWEEN GRAHAM LOCKETT Applicant

AND OUTA BOUNDZ LIMITED Respondent

Member of Authority: Eleanor Robinson

Investigation Meeting: 29 June 2018 by telephone

Determination: 29 June 2018

DETERMINATION OF THE AUTHORITY

### Employment Relationship Problem

[1] During April 2018 a Record of Settlement was entered into under [s. 149](#) of the [Employment Relations Act 2000](#) (the Act). The parties to the Record of Settlement were the Applicant, Mr Graham Lockett, and the Respondent, Outa Boundz Limited (Outa Boundz).

[2] The Record of Settlement was signed by the Applicant and by Mr Keegan Walls, sole Director and Shareholder, on behalf of Outa Boundz. The Record of Settlement was also counter-signed by a Mediator employed by the Ministry of Business, Innovation and Employment on 2 May 2018.

[3] The issue which had been brought before the Authority by the Applicant is that the Respondent has not complied fully with clauses 6 and 7 of the Record of Settlement, which state:

6. The Respondent will pay the Applicant the compensatory sum of \$5000.00 pursuant to [Section 123\(1\)\(c\)](#) (i) of the [Employment Relations Act 2000](#) being a tax free sum, within 7 days of a mediator signing these terms and conditions of settlement..

7. The Respondent will pay the Applicant wages owed of \$3845.00 net within 7 days of a mediator signing these terms of settlement.

[4] Settlement was certified under [s 149](#) of the Act by the Mediator. That certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms:

(a) were final, binding and enforceable; and

(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.

### Background Facts

[5] Mr Lockett claims that he has not been paid the agreed amounts contained in clauses

6 and 7 of the Record of Settlement which were due to be paid by the Respondent within 7 days of the date of the mediator signing the Record of Settlement i.e. by 9 May 2018.

[6] Mr Walls said that Outa Boundz had been experiencing financial difficulties which were the reason why payment of the agreed amounts had not taken place, however the company was in the process of making arrangements in order to effect payment.

### **Compliance Order**

[7] I am satisfied that the Respondent has not complied with clauses 6 and 7 of the Record of Settlement.

[8] Accordingly I find Outa Boundz to be in breach of clauses 6 and 7. of the Record of Settlement.

**[9] I order that Outa Boundz pay Mr Lockett the outstanding sums of \$5,000.00 and \$3,845.00 set out in clauses 6 and 7 of the Record of Settlement within 28 days of the date of this Determination.**

### **Penalty**

[10] Having considered the principles which should govern the imposition of a penalty<sup>1</sup>, I determine that a penalty of \$250.00 is appropriate.

**[11] I order that Outa Boundz is to pay a penalty of \$250.00, of which 50% is to be paid to Mr Lockett and 50% to the MBIE Trust Account. Payment is to be made within**

**28 days of the date of this Determination. Filing Fee**

**[12] Outa Boundz is also ordered to pay Mr Lockett the filing fee of \$71.56 within 14 days of the date of this Determination.**

### **Costs**

[13] This matter was dealt with by way of a short telephone investigation meeting.

[14] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>2</sup> that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*<sup>3</sup> at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

**[15] Outa Boundz is ordered to pay Mr Lockett the sum of \$250.00 costs, pursuant to clause 15 of Schedule 2 of the [Employment Relations Act 2000](#).**

### **Eleanor Robinson**

**Member of the Employment Relations Authority**

<sup>1</sup> *Borsboom (Labour Inspector) v Preet PVT Ltd and Warrington Discount Tobacco Ltd* [\[2016\] NZEmpC 143](#)

<sup>2</sup> [\[2005\] NZEmpC 144](#); [\[2005\] 1 ERNZ 808](#)

<sup>3</sup> [\[2001\] NZCA 313](#); [\[2001\] ERNZ 305](#)