

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2018] NZERA Wellington 47  
3025612

BETWEEN                      MARDEL (2005) LIMITED  
   Applicant  
  
AND                                LISA MILLER  
   Respondent

Member of Authority:      Vicki Campbell  
  
Representatives:            Scott Doolan for Applicant  
   Respondent in person  
  
Investigation Meeting:     28 May 2018  
  
Oral Determination:        28 May 2018  
  
Record of Oral  
Determination:              29 May 2018

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**RECORD OF ORAL DETERMINATION OF THE AUTHORITY**

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- A.      Ms Miller is directed to immediately comply with the settlement agreement and ensure the confidentiality of its terms are maintained.**
- B.      The application for a penalty is declined.**
- C.      Ms Miller is ordered to pay costs of \$250 to Mardel (2005) Limited within 28 days of the date of this determination.**

**Employment relationship problem**

[1]      Mardel (2005) Limited and Ms Lisa Miller attended mediation on 23 January 2018 and reached an agreed settlement of the employment relationship problems between them.

[2] The settlement was recorded in a Record of Settlement and signed by a Ministry of Business, Innovation and Employment Mediator pursuant to section 149 of the Employment Relations Act 2000 (the Act).

[3] The parties agreed the terms of settlement would remain confidential between them. Mardel says Ms Miller has breached the confidentiality clause of the agreement and has applied to the Authority for a compliance order and the imposition of penalties.

[4] As permitted by s 174 of the Employment Relations Act 2000 (the Act) this determination has not recorded all the evidence received from Mardel and Ms Miller but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

### **Determination**

[5] Mr Paul De Lara Bell is a director and shareholder of Mardel. He was advised Ms Miller had attended his store where she told employees she had won her grievance claims and been awarded thousands of dollars.

[6] Two employees provided statements to that effect to Mr De Lara Bell. One employee stated Ms Miller had approached him at the workplace and told him she had won monetary compensation from Mardel. In his written statement the employee states Ms Miller bragged about spending the money on plane tickets to Hawaii.

[7] At the investigation meeting this employee resiled from his written statement and told me Ms Miller had told him she had won but could not tell him about the money. He said she bragged about buying tickets and going on holiday and he assumed that this was as a result of the money she received at mediation.

[8] Ms Miller has produced a receipt from her travel agent showing that the balance of the costs of her tickets for her overseas trip had been paid prior to the parties attending mediation.

[9] The second employee also provided a written statement to Mr De Lara Bell in which the employee records discussions that have been reported to her by unknown

third parties where it is alleged Ms Miller told others that she had won thousands and thousands of dollars at mediation.

[10] At the investigation meeting this employee told me Ms Miller told her directly that she had won thousands and thousands and also that she should “imagine thousands”. Ms Miller denies having any such conversation with the employee.

[11] Mr De Lara Bell and Ms Miller have confirmed that during the mediation process they were advised that the most they could say about the outcome of mediation was that the parties had resolved their differences. Ms Miller told me she was advised she could tell her husband but no one else.

[12] The public interest in having terms of a settlement agreement, made and certified in mediation, honoured by the parties to that settlement agreement favours an order for compliance.

[13] I am satisfied Ms Miller was in breach of the settlement agreement when she advised employees of Mardel that she had “won” her case against her ex employer. In fact she did not “win”. The settlement agreement records that the terms of the settlement were reached on a “denial of liability” basis. That means there was no acceptance by Mardel that Ms Miller had a valid personal grievance. In that sense she did not “win”. Instead the parties agreed to resolve matters to avoid the costs of litigation.

[14] I am not satisfied Ms Miller disclosed the actual terms of the settlement agreement. One of the employees confirmed Ms Miller told him she could not talk about the money. Other evidence was largely hearsay and was not reliable.

[15] The Act states that settlement agreements certified pursuant to section 149 are final, binding and enforceable. It is appropriate for the compliance order sought to be made.

[16] Ms Miller is directed to immediately comply with the settlement agreement and ensure the confidentiality of its terms are maintained.

[17] I have considered whether it is appropriate in all the circumstances to impose a penalty and have determined it is not. The application for a penalty to be imposed on Ms Miller is declined.

### **Costs**

[18] Mardel has been successful to the extent that a compliance order has been issued to Ms Miller. The investigation meeting took approximately 2 hours including the time required to issue this oral determination. No written briefs of evidence were required to be produced. Mardel has been put to the expense of bringing its claim against Ms Miller.

[19] The usual practice of the Authority is to order a contribution to costs on a daily tariff basis. In this case that tariff would amount to \$1,500. Taking all of the circumstances into account I consider a reasonable contribution to Mardel's costs is \$250.

[20] Ms Miller is ordered to pay costs of \$250 to Mardel (2005) Limited within 28 days of the date of this determination.

Vicki Campbell  
Member of the Employment Relations Authority