

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2018] NZERA Auckland 90  
3022826

BETWEEN

PETER MARTIN  
Applicant

AND

NZ SAMPLING AND  
DECONTAMINATION  
SERVICES LIMITED  
Respondent

Member of Authority: Vicki Campbell

Representatives: Ken Usmar for Applicant  
Arthur Hawes for Respondent

Investigation Meeting 16 March 2018

Determination: 21 March 2018

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**DETERMINATION OF THE AUTHORITY**

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- A. NZ Sampling and Decontamination Services Limited is ordered to comply with the terms of the record of settlement within 14 days of the date of this determination.**
- B. NZ Sampling and Decontamination Services Limited is ordered to pay to the Employment Relations Authority a penalty of \$500 within 14 days of the date of this determination.**
- C. NZ Sampling and Decontamination Services Limited is ordered to reimburse Mr Martin the sum of \$71.56 being the filing fee on this application within 14 days of the date of this determination.**

### **Employment relationship problem**

[1] On 28 August 2017 the parties entered into a record of settlement under s 149 of the Act which required NZ Sampling and Decontamination to pay specified amounts to Mr Martin. In addition to the payments to Mr Martin, NZ Sampling and Decontamination agreed to contribute to Mr Martin's costs of attending mediation. It agreed to pay The Advocate Solution Limited the sum of \$1,000 plus GST on provision of an invoice. It was agreed the payment would be made on or before 23 October 2017.

[2] Mr Martin claims the settlement agreement has been breached by NZ Sampling and Decontamination and seeks a compliance order and penalties.

[3] The statement of problem was served on NZ Sampling and Decontamination on 30 January 2018. On 15 February Ms Ananda Hawes, one of two directors and shareholders of NZ Sampling and Decontamination, telephoned the Authority and advised that the company had not received the documents. Ms Hawes advised the Authority NZ Sampling and Decontamination would accept service of documents via email. The statement of problem and supporting documents together with a statement in reply template were forwarded via email that same day. Despite this, no statement in reply was received from NZ Sampling and Decontamination.

[4] In order to advance the matter, on 2 March I proposed to the parties that the matter progress to an investigation meeting and made directions accordingly. A Notice of Direction to that effect was served on the parties via email that same day and a Notice of Investigation Meeting was served on the parties via email on 12 March 2018.

[5] At the start of the investigation meeting NZ Sampling and Decontamination attended and made an oral application for leave to respond or reply to Mr Martin's application. The application was opposed by Mr Martin. As it is always preferable to hear from both sides of a problem NZ Sampling and Decontamination was granted leave to respond.

## **Issue**

[6] The questions for determination are whether the record of settlement was breached and if so whether a compliance order should be made and/or penalties imposed.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded all the evidence received from Mr Martin and NZ Sampling and Decontamination but has stated findings of fact, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result.

## **Compliance order**

[8] Under s 137 of the Act the Authority has the power to order compliance with terms of settlement made under s 149 of the Act. Mr Hawes told me that when NZ Sampling and Decontamination entered into the record of settlement he was not aware that the financial position of the company would deteriorate to the extent that it has.

[9] All amounts due to Mr Martin personally under the terms of the record of settlement have been paid. Mr Hawes told me he intends to pay the invoice from The Advocate Solution Limited in full but payment in a lump sum was not possible at the moment. He applied for an order that the invoice amount be paid by instalments of between \$100 and \$150 per week. Mr Hawes has not provided me with any supporting evidence that NZ Sampling and Decontamination is not financial able to pay the total invoiced amount.

[10] The public interest in having the terms of a record of settlement made and certified in mediation honoured by the parties favours an order for compliance. Records of settlement certified pursuant to s 149 are final, binding and enforceable. It is appropriate for the compliance order sought to be made.

[11] NZ Sampling and Decontamination Services Limited is ordered to comply with the terms of the record of settlement by paying the invoice received from The Advocate Solution Limited in full within 14 days of the date of this determination.

## **Penalty**

[12] In cases such as this, it is appropriate to impose a penalty to express disapproval of the actions of NZ Sampling and Decontamination and to deter other

parties who enter into records of settlement under s 149 and then fail to do adhere to terms on which they have agreed.

[13] The maximum penalty is \$20,000. The failure to pay the invoice did not affect Mr Martin. Mr Hawes gave evidence that the company was not in a strong financial position. I directed Mr Hawes to provide copies of the financial statements for NZ Sampling and Decontamination in order to properly assess its ability to pay a penalty. These documents have not been provided to the Authority.

[14] A penalty of \$20,000 is out of proportion with the breach. An appropriate penalty in all the circumstances of this case is \$500 and the penalty should be paid to the Employment Relations Authority. The Employment Relations Authority will then pay this sum into the Crown bank account.

[15] NZ Sampling and Decontamination Services Limited is ordered to pay to the Employment Relations Authority a penalty of \$500 within 14 days of the date of this determination.

#### **Further non-compliance**

[16] The Authority's orders may be the subject of a further application for compliance in the Employment Court which is empowered to impose penalties for continuing non-compliance which include imprisonment, fines and the sequestration of property.

#### **Costs**

[17] Mr Martin gave evidence that he will not incur any costs as a result of this application. He is however, entitled to be reimbursed the filing fee.

[18] NZ Sampling and Decontamination Services Limited is ordered to reimburse Mr Martin the sum of \$71.56 being the filing fee on this application within 14 days of the date of this determination.

Vicki Campbell  
Member of the Employment Relations Authority