



New Zealand Employment Relations Authority Decisions

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Nayak v Urban Turban New Zealand Limited (Auckland) [2018] NZERA 76; [2018] NZERA Auckland 76 (2 March 2018)

Last Updated: 17 March 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND		
		[2018] NZERA Auckland 76 3023971
	BETWEEN	SACHIN NAYAK Applicant
	A N D	URBAN TURBAN NEW ZEALAND LIMITED First Respondent
	A N D	BHUSHAN AROLKAR Second Respondent
	A N D	JASMINE AROLKAR Third Respondent
Member of Authority:	Rachel Larmer	
Representatives:	Nathan Santesso, Advocate for Applicant Jasmine Arolkar for all three Respondents	
Investigation Meeting:	On the papers	
Submissions Received:	19 February 2018 from Applicant 26 February 2018 from Respondents	
Date of Determination:	02 March 2018	
DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY		

Employment relationship problem

[1] On 10 July 2017 a mediator from the Ministry of Business Innovation and Employment signed off under [s.149](#) of the [Employment Relations Act 2000](#) (“the Act”) on a Record of Settlement that the parties had entered into.

[2] The applicant claims that he is still owed money under the Record of Settlement and he now seeks a compliance order that the respondents pay him the \$1,681 he says is outstanding for his legal fees.

[3] The applicant also seeks that a penalty be imposed on the respondents for not paying him the full amount of money he says is due to him under the terms of the Record of Settlement.

[4] The respondents say they have met all of their obligations under the Record of Settlement and that the applicant has been paid all of the money he was owed.

[5] The second and third respondents are based overseas so the parties agreed that in order to save time and costs the Authority should determine this matter on the papers.

[6] Clause 1 of the Record of Settlement provided that a specified amount of money was to be paid to the applicant. Clause 2 set out a payment schedule for the monies to be paid which started on 01 August 2017.

[7] On 05 August 2017 Mr Nayak filed a Statement of Problem in matter AEA 3016771 (not this matter which is AEA 3023971) alleging that the respondents had breached the same Record of Settlement that is in issue in this matter.

[8] The Authority scheduled an investigation meeting to be held on 19 September 2017 for matter AEA 3016771. However, this investigation meeting did not proceed because on 12 September 2017 Mr Nayak's representative advised the Authority in writing that Mr Nayak wished to withdraw the claims in his Statement of Problem.

[9] Mr Nayak claims that he withdrew matter AEA 3016771 on 12 September 2017 based on an agreement between the parties that the respondents would contribute \$1,681 towards his legal costs in respect of that matter.

[10] The respondents deny that. The respondents say that there was an issue with the scheduled payments, which they say they addressed by making the necessary payments.

[11] The respondents further say that they made an additional payment of \$1,681 on the advice of their adviser to show good faith to the applicant before it became due under clause 2 to show their (the respondents') continued commitment to meeting their payment obligations under the Record of Settlement.

[12] The parties agree that they did not enter into a further Record of Settlement or seek a consent determination from the Authority regarding any alleged settlement that the parties may have achieved in respect of matter AEA 3016771.

[13] That means that the only Record of Settlement between the parties is the one

signed by the mediator on 10 July 2017, so any compliance order that may be issued in this matter must relate to that.

[14] A compliance order may only be issued if there has been a breach of the Record of Settlement. It cannot be issued for a private settlement the parties may or may not have achieved.

[15] The respondents say that when the payment problem was brought to their attention they paid an extra \$1,681 before it had become due. The respondents say that they understood it to be part payment towards the total amount they owed the applicant under clause 1 of the Record of Settlement.

[16] The respondents say they did not make this payment as an additional payment towards the applicant's legal fees as that would have been over and above the total amount owed to the applicant under the terms of the Record of Settlement.

[17] The respondents made the final payment due under the Record of Settlement on 03 January 2018. They say that because they have fully complied with their payment obligations under the Record of Settlement there is no breach that could potentially attract a compliance order.

[18] Based on the information reviewed by the Authority I agree with the respondents.

[19] The applicant's current claim relates to an alleged settlement that the respondents dispute occurred involving the payment of legal fees. The Record of Settlement does not make any reference to the respondents being required to pay any of the applicant's legal fees.

[20] I am satisfied from the evidence produced by both parties that the total amount that the respondents agreed to pay the applicant as per clause 1 of the Record of Settlement has indeed been paid in full within the time period specified in clause 2 of the Record of Settlement.

[21] The applicant has failed to establish that he is still owed money under the Record of Settlement so his applications for a compliance order and penalty does not succeed.

[22] It was the applicant's decision to withdraw matter AEA 3016771 without first obtaining a Record of Settlement under [s.149](#) of the Act or a consent determination that required the respondents to pay the applicant's legal fees.

[23] The respondents, although the successful parties, are not entitled to an award of costs because they represented themselves in person so did not incur legal costs in respect of this matter. I therefore make no order as to costs.

Rachel Larmer

Member of the Employment Relations Authority

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