

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2017] NZERA Auckland 28  
3001453

BETWEEN            RAWHITI OKA  
                                 Applicant  
  
A N D                    HANDYMAN PRO NZ  
                                 LIMITED  
                                 Respondent

Member of Authority:      Rachel Larmer  
  
Representatives:            Carl Mateer, Advocate for Applicant  
                                 No appearance by Respondent  
  
Investigation Meeting:      02 February 2017 by Telephone Conference  
  
Date of Determination:      02 February 2017

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**DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY**

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**No Statement in Reply**

[1]      The Statement of Problem was served on Handyman Pro NZ Limited's (Handyman's) registered office for service in Matamata on 29 December 2016. It was signed for by "*K Reddy*". The Companies Office register records a Mr Krishneil Von Roy Reddy as the sole director and shareholder of Handyman.

[2]      The Statement in Reply was due by 19 January 2017. No Statement in Reply has been filed.

[3]      The Authority Officer emailed Mr Reddy on 24 January 2017 advising that Handyman was out of time for filing a Statement in Reply so would need to seek leave if it wished to defend Mr Oka's claims.

[4] Mr Reddy replied to the Authority's email on 24 January 2017 claiming that he had not received any documents from the Authority. The Authority Officer informed Mr Reddy that the Authority had received confirmation from New Zealand CourierPost via its track and trace delivery system (which the Authority uses to effect service) of a "K Reddy" having signed for the Statement of Problem at the company's registered office on 29 December 2016.

[5] Notwithstanding that, on 24 January 2017 the Authority Officer emailed a further copy of the Statement of Problem and supporting documents together with the Notice of Investigation Meeting to Mr Reddy.

[6] These same documents were also sent again via the Authority's online case management system (named Resolve) and also via track and trace courier.

[7] The Resolve cases management records show that the above documents were all delivered to (served on) Handyman's registered office and were signed for by K Reddy on 26 January 2017.

[8] I am satisfied that there were two separate deliveries (effecting service of the relevant documents) made to Handyman's registered office within less than half an hour of each other because the documents were served via Resolve and again via track and trace couriers.

### **No leave application**

[9] Because Handyman did not file a Statement in Reply within time it requires leave of the Authority to defend Mr Oka's claims. No leave application has been filed by Handyman.

### **No appearance by respondent**

[10] Mr Reddy contacted the Authority Officer this morning to say he would be attending the Investigation Meeting by telephone today and gave an alternate telephone number for the Authority to contact him on.

[11] Mr Reddy's phone went to answerphone at the appointed time. The Investigation Meeting was adjourned for the Authority Officer to contact Mr Reddy. They did speak by phone and Mr Reddy was told the Authority would call him back in five minutes. When it did that the phone went to answerphone.

[12] A further adjournment occurred while a number of attempts were made to contact Mr Reddy. The phone number would ring then go to answerphone. The Investigation Meeting then proceeded.

[13] At the conclusion of the Investigation Meeting the Authority Officer received an email from Mr Reddy saying he was waiting for a call from the Authority. That information seems very odd because the Authority made multiple calls to him over the same period he alleges he was standing by.

[14] Mr Reddy's email says he spoke to another Authority Officer (second AO) by phone while the Authority was conducting its Investigation Meeting. I have spoken to that long standing, highly experienced and very professional Authority Officer who told me that while Mr Reddy did call he was told that the Authority Officer he had been dealing with previously was in an Investigation Meeting.

[15] The second AO says Mr Reddy did not identify himself as a party to the investigation that was occurring or explained that he was required to be on the call in order to participate with the investigation. I prefer the second AO's account of these events over the version Mr Reddy has recorded in his email to the Authority.

[16] I am satisfied that Handyman did not attend the Investigation Meeting today as scheduled because it did not answer any of the multiple calls the Authority made to it during the course of the Investigation Meeting this morning.

[17] By that time Mr Reddy's email was seen the Authority's investigation had already been conducted and the applicant had been given an oral indication of the outcome of his claims.

### **Employment relationship problem**

[18] The parties entered into a Record of Settlement (RoS) under s.149 of the Employment Relations Act 2000 (the Act) which was signed off by a mediator from the Ministry of Business, Innovation and Employment (MBIE) on 01 December 2016.

[19] Mr Oka claims that Handyman Pro NZ Limited (Handyman) has failed to comply with the terms of the RoS because it has not paid either of the amounts set out in clauses 3 or 4 of the RoS.

[20] Mr Oka seeks a compliance order from the Authority and that a penalty be imposed on Handyman for its breach of the RoS.

### **Issues**

[21] The following issues are to be determined by the Authority:

- a. Should a compliance order be issued?
- b. Should a penalty be imposed?
- c. If so, should some or all of any penalty imposed be paid to the applicant?
- d. What if any costs should be awarded?

### **Should a compliance order be issued?**

[22] I am satisfied from Mr Oka's uncontested evidence that Handyman has failed to comply with its obligations under clauses 3 and 4 of the Record of Settlement (RoS) signed by the parties.

[23] Not only has Handyman not fully complied with clauses 3 and 4 but it has also failed to respond to Mr Oka's attempts to get paid. Handyman has also failed to take any steps at all towards meeting its obligations under the RoS.

[24] Mr Mateer informed the Authority that Handyman had been sent numerous emails and text messages requesting payment. Mr Oka and his representative had attended Handyman's premises asking when he would be paid and that Mr Reddy had called the police and tried to get them trespassed.

[25] Mr Oka says he has been told by a Handyman employee that Mr Reddy has said he will be winding up the company and heading overseas in the immediate future. Mr Oka says that he has been told by a current Handyman employee that he has not been paid his wages. Mr Oka is concerned that Handyman and/or Mr Reddy may take actions that prevent him (Mr Oka) recovering the money he is owed.

[26] It is important to note that these breaches of clauses 3 and 4 of the RoS are still continuing notwithstanding Mr Oka's attempts to recover the money he is owed from Handyman and/or the Authority's involvement. Not only has no action been taken by

Handyman to meet its obligations but it appears to be deliberately avoiding such obligations.

[27] I am satisfied that Handyman is unlikely to meet its legal obligations under clauses 3 and 4 of the RoS unless the Authority issues a compliance order which has the effect of compelling it to do so.

[28] I therefore consider this is an appropriate matter in which to exercise the Authority's discretion to issue a compliance order.

[29] Accordingly, Handyman is ordered, within 14 days of the date of this determination, to comply with clauses 3 and 4 of the RoS by paying Mr Oka the full amount he is owed in accordance with these clauses.

### **Should a penalty be imposed on the respondent?**

[30] I also consider it an appropriate matter in which to impose a penalty on Handyman. These breaches of the Record of Settlement have continued unabated despite being brought to Handyman's attention.

[31] It is important for the Authority to punish Handyman and to signal its strong disapproval of breaches of mediated Records of Settlement entered into under s.149 of the Act. A penalty acts as a deterrent to Handyman and others who may be inclined to ignore their legal obligations by breaching a RoS.

[32] I have regard to the principles that the Full Employment Court recently set out (relating to the imposition of penalties in a Labour Inspector matter) in *Labour Inspector v Binde Enterprises Ltd.*<sup>1</sup> I consider these provide useful guidance as to how the Authority is to approach the imposition of penalties.

[33] In terms of culpability, Handyman has made no attempt to comply with its obligations under the RoS because it has done nothing to pay any of the amounts it agreed to pay Mr Oka to settle his claims.

[34] Handyman has also aggravated these ongoing breaches of the RoS by failing to engage with Mr Oka who has been unsuccessfully attempting to recover the money he is owed by Handyman.

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<sup>1</sup> [2016] NZERA Auckland 399.

[35] I am satisfied to the required standard of proof that Handyman has breached clauses 3 and 4 of the RoS and that the nature of these ongoing breaches are such that they should attract the imposition of a penalty.

[36] Whilst acknowledging the general principle that breaches of a s.149 RoS are inherently serious because parties need to be confident that if they compromise their claims, then the settlements they enter into are final binding and enforceable, I recognise that the degree of culpability in this case is at the lower end of the scale in terms of the nature and type of breaches the Authority usually sees.

[37] This is not a one off inadvertent breach but is rather an ongoing deliberate breach which has had a seriously adverse financial impact on Mr Oka who was expecting to be paid the money he was owed prior to Christmas. Handyman's failure to respond to Mr Oka is another aggravating feature of its breaches.

[38] Handyman has engaged in deliberate ongoing breaches which occurred within 14 days of the parties entering into the RoS. Handyman could not satisfactorily explain why this had happened.

[39] I consider that there was no credible demonstration of remorse or understanding of wrongdoing by Handyman.

[40] I consider that Mr Oka (while not a 'vulnerable' employee in terms of how that phrase is usually applied) he was in this particular situation in a somewhat vulnerable position because he was understandably relying on the funds that he was to be paid under the RoS to cover his expenses over the Christmas and New Year period.

[41] I have reviewed the penalties awarded for breaches of a Record of Settlement over the period 2012 to date. The penalties vary in accordance with the particular facts of each case but they range from a low of \$500 to a high of \$7,000. The maximum penalty Handyman is potentially liable for, for each breach is \$20,000.

[42] I note that these cases in which penalties have been awarded refer to the fact that deterrence is necessary and penalties must be set at a level which will enable the deterrent effect to influence others.

[43] I adopt a totality approach to the imposition of penalties.

[44] Handyman is ordered to pay a penalty of \$2,000 under s.149(4) of the Act for its breach of the RoS entered into by the parties on 01 December 2016.

**Should some or all of the penalty be paid to Mr Oka?**

[45] Mr Oka was relying on the RoS payments to support his family, particularly over the Christmas period. Mr Oka told the Authority that Handyman's breaches left him and his family without money for food or presents over Christmas which was especially distressing to Mr Oka because of the impact it had on his children.

[46] Handyman is ordered to pay \$1,500 of the total penalty directly to Mr Oka, who has directly suffered as a result of Handyman's breaches. Handyman is to pay the remaining \$500 of the penalty directly into the Crown bank account.

**What if any costs should be awarded?**

[47] Mr Mateer says that Mr Oka has incurred legal costs of \$500 trying to recover the money he is owed under the RoS. Mr Oka as the successful party is entitled to a contribution towards his actual legal costs.

[48] I adopt the Authority's usual notional daily tariff based approach to costs. The notional starting point for assessing costs is \$4,500 per day which is to be pro-rated for the time taken for this matter.

[49] Handyman is ordered to pay Mr Oka \$375 towards his actual legal costs.

[50] Handyman is ordered to reimburse Mr Oka \$71.56 for his filing fee.

**Orders**

[51] Handyman is ordered within 14 days of the date of this determination to:

- a. Comply with clauses 3 and 4 of the RoS;
- b. Pay Mr Oka \$1,500 of the penalty that has been imposed;
- c. Pay the Crown bank account \$500 of the penalty that has been imposed;

- d. Pay Mr Oka \$375 towards his actual legal costs;
- e. Pay Mr Oka \$71.56 to reimburse his filing fee.

**Rachel Larmer**  
**Member of the Employment Relations Authority**