

**This determination includes
an order prohibiting
publication of certain
information.**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2024] NZERA 691
3268899

BETWEEN	OML Applicant
AND	FARMER'S FIRST LIVESTOCK LIMITED Respondent

Member of Authority: Philip Cheyne

Representatives: David Cain, advocate for the applicant
No appearance for the Respondent

Investigation Meeting: On the papers

Date of Determination: 20 November 2024

DETERMINATION OF THE AUTHORITY

Non-publication

[1] The applicant entered into a record of settlement (ROS) in accordance with s 149 of the Employment Relations Act 2000. It includes an obligation to keep the terms confidential. The respondent did not comply with the ROS, so the applicant now seeks to enforce it. The applicant says he should not lose the benefit of confidentiality, just because of the respondent's default. I agree.

[2] The respondent did not appear and did not apply for a non-publication order.

[3] I prohibit the publication of the name of the applicant. I will refer to the applicant as OML, a randomly generated string of letters.

The problem and the Authority's investigation

[4] A record of settlement dated 31 July 2023 required Farmer's First Livestock Limited (FFL) to pay compensation to the applicant and costs to the applicant's representative.

[5] The applicant says that FFL has not fully complied with the ROS and seeks a compliance order, penalties and costs.

[6] I am satisfied that the statement of problem was served on FFL. However, the company has not lodged a statement in reply, despite undertaking to do so and responding at various times to the Authority's correspondence.

[7] OML agreed to the problem being determined on the papers. OML's advocate lodged and served an affidavit in support.

A compliance order and a penalty are appropriate

[8] In the ROS, OML agreed to return logbook information to FFL and did so. FFL's then solicitor confirmed that in an email to OML's advocate.

[9] The ROS then required FFL to pay compensation of \$4,250.00 to OML and to pay legal costs of \$5,750.00 to Sacked Kiwi Limited. Payments were due within ten working days after OML returned the logbook.

[10] FFL failed to pay. OML's advocate followed up and FFL agreed to a payment plan. Under that arrangement, FFL paid OML \$2,000.00 on 7 September 2023 and should have paid further amounts to OML and to Sacked Kiwi Limited over the following weeks. But FFL did not pay anything further.

[11] I find FFL breached the ROS and still owes \$2,250.00 compensation to OML and costs of \$5,750.00 to Sacked Kiwi Limited.

[12] FFL was placed in receivership in March 2024, but that ended in May 2024. In September 2024 FFL filed in the companies office an annual return and other particulars. It appears that the company continues to operate.

[13] The sole director and shareholder of FFL is Leonard Bourton. Mr Bourton's most recent message to the Authority indicates that that FFL has not met its obligations because of a continuing sense of dissatisfaction towards OML from the employment, despite the ROS.

[14] Mr Bourton says he no longer lives in New Zealand, but the company remains extant.

[15] I am satisfied that a compliance order is appropriate to prevent further non-compliance with the ROS.

[16] It is appropriate to fix a penalty. Mediation is the primary problem-solving method for employment relationship problems. FFL should have respected the ROS that it entered into. It is important to punish FFL for its breach of the law and to make it clear to others that they must comply with settlement obligations. The breach appears intentional, given Mr Bourton's recent comments about OML. I accept the evidence that the breach has caused OML disappointment, frustration and financial embarrassment. FFL has not remedied its breach. The only things that can be said in mitigation is that FFL paid some of the compensation due to OML and has not been found previously to have breached its obligations in similar circumstances.

[17] I set the penalty at \$2,000.00. The whole of the penalty should be paid to OML, as there is no other remedy for what OML has lost as a result of FFL's breach of the ROS.

Orders

[18] Farmer's First Livestock Limited is to comply with the record of settlement dated 31 July 2023 by paying \$2,250.00 compensation to OML and \$5,750.00 costs to Sacked Kiwi Limited, by no later than Wednesday 4 December 2024.

[19] Farmer's First Livestock Limited is to pay OML a penalty of \$2,000.00, by no later than Wednesday 4 December 2024.

[20] Costs are sought. I accept OML has incurred costs with respect to this enforcement application. Farmer's First Livestock Limited is to pay OML costs of \$1,500.00, by no later than Wednesday 4 December 2024.

[21] Attached to this determination is a copy of s 140 of the Employment Relations Act 2000. If FFL breaches the order at paragraph [18] above, OML can apply to the Employment Court to exercise its powers set out in that section.

Philip Cheyne
Member of the Employment Relations Authority