

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 155
5407855

BETWEEN SUNITA DEVI PRASAD
Applicant

A N D JUST SAMOSAS AND
CATERERS LIMITED
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Sunita Prasad in person
No appearance on behalf of respondent

Investigation Meeting: 29 April 2013 in Hamilton

Date of Determination: 1 May 2013

DETERMINATION OF THE AUTHORITY

A. The respondent, Just Samosas and Caterers Limited (Just Samosas) is ordered to comply with the settlement agreement dated 16 February 2010 made under s149 of the Employment Relations Act 2000 (“the Act”). Just Samosas is ordered to pay the applicant, Ms Prasad the sum of \$3,034.29 within 28 days of this determination.

B. Just Samosas is ordered to pay a penalty of \$500.00 under s149(4) of the Act in respect of its breach of the settlement agreement. The penalty is to be paid directly to Ms Prasad.

Non-appearance of respondent

[1] The respondent, Just Samosas and Caterers Limited (Just Samosas) failed to attend the investigation meeting on 29 April 2013. I am satisfied that Just Samosas was properly served with the statement of problem and subsequent correspondence from the Authority together with a notice of investigation meeting.

[2] In those circumstances, I proceeded to investigate the matter in the absence of Just Samosas.

Employment Relationship Problem

[3] On 16 February 2010, a record of settlement pursuant to s.149 of the Employment Relations Act 2000 (“the Act”) was entered into by the parties and signed by a mediator¹. The terms of the settlement agreement signed by the parties stated:

1. *The settlement is final and binding on and enforceable by us; and*
2. *except for enforcement purposes, neither of us may seek to bring those terms before the Authority or Court whether by action, appeal, and application for review, or otherwise; and*
3. *the terms of the settlement cannot be cancelled under s.7 of the Contractual Remedies Act 1979; and*
4. *that s.149(4) provides that a person who breaches an agreement term of settlement to which sub-section (3) applies is liable to a penalty imposed by the Authority.*

[4] The settlement agreement was certified by a mediator employed by the Chief Executive of the Department of Labour to provide mediation services under the Act. Pursuant to the settlement agreement, Just Samosas agreed to pay outstanding wages and holiday pay owed to Ms Prasad, by way of regular instalment. Just Samosas paid some of the monies owed to Ms Prasad by way of instalment. However, some of the instalments made were dishonoured by the bank and some were not made.

[5] I was provided with copies of Ms Prasad’s bank statements and am satisfied that after deducting payments made by it to Ms Prasad, Just Samosas still owes Ms Prasad the sum of \$3,034.29 under the settlement agreement.

[6] I order Just Samosas to pay Ms Prasad the sum of \$3,034.29 within 28 days of the date of this determination.

[7] Given the circumstances surrounding this matter and the length of time it has taken for Just Samosas to pay Ms Prasad monies owing to her pursuant to the settlement agreement, I intend imposing a penalty of \$500 on Just Samosas pursuant

¹ 5275081

to s149(4) of the Act. I order the entire penalty of \$500 to be paid to Ms Prasad directly pursuant to s136 of the Act.

Anna Fitzgibbon
Member of the Employment Relations Authority