

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 400/07
5106312

BETWEEN VISHAL RIKHI
 Applicant

AND ANZ TELEPORT &
 BROADCAST LIMITED
 Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
 Matt Robson for Respondent

Investigation Meeting: 18 December 2007 at Auckland

Determination: 18 December 2007

DETERMINATION OF THE AUTHORITY

[1] The Applicant seeks orders for the Respondent to comply with the terms of a confidential record of settlement made between them on 24 October 2007 and certified under s149 of the Employment Relations Act 2000 by an authorised mediator of the Department of Labour.

[2] The terms of settlement were confidential. For the purposes of this determination I need only say that they included payments of sums of money due to be paid by the Respondent to the Applicant in two equal instalments on 12 November and 10 December 2007. Neither payment has been made in full. The Respondent has made a small part payment of one instalment. Both amounts are now overdue.

[3] The terms also included provision of a reference with certain agreed elements and arrangements for the Applicant to pick up personal belongings at the Respondent's business premises. The Applicant complains that the reference provided is not as agreed and that some but not all of his personal property has been returned.

[4] The Respondent's director Gurmail Singh today gave evidence that he had made the settlement agreement in good faith, believing that funds needed to meet its terms would be available through his bank. However the bank is releasing funds only for invoices it approves and the terms of settlement with the Applicant have not been disclosed to the bank.

[5] Having heard from the parties I am satisfied that compliance orders should be made under s137 and s138 of the Act in the following terms:

- (i) Within 14 days of the date of this determination the Respondent is to provide to the Applicant an amended reference on the Respondent's letterhead that includes wording identifying the Applicant's former position as that of chief executive officer for the Respondent; and
- (ii) Within 7 days of the date of this determination the Applicant is to provide a list of personal property that he alleges is or was in the Respondent's possession at the time of the settlement agreement. The list is to be sent by email to Mr Robson and copies to Mr Singh. Within a further 7 days the Respondent is then to make arrangements, either through Mr Robson or Mr Raja Sakaran, for the Applicant to collect any outstanding items of property; and
- (iii) Within 28 days of the date of this determination the Respondent is to pay the remainder of the amounts due under the settlement agreement of 24 October 2007.

[6] As discussed with the parties today, should the Respondent fail to comply with these orders, including the payment of the sums of money due, the Applicant is able to seek enforcement measures in the Employment Court. Under s140 of the Act the Court is empowered to impose a term of imprisonment of up to three months, impose a fine of up to \$40,000 or sequester property of the party in default.

Robin Arthur
Member of the Employment Relations Authority