

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2024] NZERA 706
3315000

BETWEEN	HAMID REZA SADEGHI Applicant
AND	TERENCE LE SUEUR Respondent

Member of Authority:	Andrew Gane
Representatives:	Applicant in person Respondent in person
Investigation Meeting	On the papers
Submissions received and other material	9 October 2024 from the Applicant 11 October 2024 from the Respondent
Date:	26 November 2024

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Hamid Sadeghi was previously employed by Terrence Le Suer in 2023. Upon the end of their employment relationship, Mr Sadeghi and Mr Le Suer entered into a settlement agreement to resolve an employment relationship problem between them (the record of settlement). The record of settlement was signed by a mediator on 3 July 2024.

[2] Mr Sadeghi claims Mr Le Suer failed to comply with the terms of the settlement agreement by failing to pay the agreed settlement amount. Mr Sadeghi made an application to the Authority for a compliance order to be granted against Mr Le Suer in respect of the record of settlement.

[3] In response to Mr Sadeghi, Mr Le Suer made a counterclaim saying Mr Sadeghi's claimed settlement amount should be set off against wage amounts already paid by him to Mr Sadeghi.

The Authority's investigation

[4] In the interests of avoiding unnecessary costs and time, the parties agreed for the matter to be heard on the papers.¹ Each party lodged an affidavit, supporting documents and submissions in support of their respective positions.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received. In determining this matter, I have carefully considered all the material before me, including all the evidence provided by the parties and their submissions.

The issues

[6] The issues requiring investigation and determination are:

- (a) Did Mr Le Suer breach the record of settlement?
- (b) If there is a breach established should an order for compliance be made?
and
- (c) Should reimbursement of the lodging fee be ordered?

The record of settlement

[7] The record of settlement included the following clauses which set out the circumstances of any amounts to be paid by Mr Le Suer to Mr Sadeghi:

Clause 2 - The Employer, Terry Le Suer ("Terry") will pay to Hamid Reza Sadeghi ("Hamid"), the gross sum of \$2,500.00 for wages and holiday entitlements. The net amount of this sum will be paid by way of Direct Credit into the bank account of Hamid that is held by Terry, within 10 days of the date of this agreement.

¹Employment Relations Act 2000, s174D.

Clause 5 - This is a full and final settlement of at wage and holiday pay matters and claims between the parties arising out of their employment relationship.

Alleged breaches of the record of settlement

[8] Mr Sadeghi submitted that Mr Le Sueur breached the payment obligation in clause 2 of the record of settlement.

[9] Mr Le Sueur confirmed in his evidence that the payment of \$2,500 due on 13 July 2024 was not made in accordance with the record of settlement (the outstanding payment). As at the date of lodging his affidavit, Mr Le Sueur had not paid the outstanding payment.

[10] Mr Le Sueur said he had acknowledged that he did owe Mr Sadeghi the outstanding payment which represented payment for wages and holiday pay. However, he claimed the outstanding payment should be offset by wages already paid to Mr Sadeghi in 2023, prior to the 2024 record of settlement. Mr Le Sueur also made allegations against Mr Sadeghi for theft of his property, which he claimed was a reason why the outstanding payment should not be made.

Relevant Law

[11] A record of settlement is made under s 149 of the Act. A mediator will only sign a settlement after the parties have affirmed their understanding that the terms are final and binding on, and enforceable by the parties and may not be cancelled under the Contract and Commercial Law Act 2017, and except for enforcement purposes may not be brought before the Authority or the Court.

[12] The Authority has the power to order compliance when any person has not observed or complied with the provision of any terms of settlement or a decision that is a breach of s 149(3). Section 151 of the Act provides it may be enforced by a compliance order.² A person who breaches an agreed term of settlement is liable to a penalty imposed by the Authority under section 149(4) of the Act.

² Employment Relations Act, s 137(1)(a)(iii).

Analysis

[13] As Mr Le Sueur has admitted his failure to make the outstanding payment under the record of settlement, I find Mr Le Suer breached his obligations under the record of settlement.

[14] Any alleged counterclaim raised by Mr Le Suer about matters arising out of Mr Sadeghi's employment was not raised prior to the parties entering into the record of settlement and is prohibited under clause 5 of the record of settlement.³

[15] A compliance order is warranted particularly as record of settlements under s 149 of the Act are the primary mechanism by which most employment relationship problems are resolved every year in New Zealand.⁴ It is important that public confidence in such agreements is not undermined and that parties have certainty with which they may structure their affairs around such agreements.

[16] The imposition of a compliance order is a serious matter. Should Mr Le Sueur fail to comply with the compliance order, Mr Sadeghi is entitled to pursue the breach in the Employment Court or the District Court. The Employment Court has powers to impose a fine not exceeding \$40,000, order property to be sequestered, or impose a sentence of imprisonment not exceeding 3 months. Alternatively, a certificate of determination may be obtained from the Authority and Mr Sadeghi may also seek enforcement through the District Court.⁵

Conclusion

[17] Mr Le Sueur breached the terms of the record of settlement by failing to pay the amount set out in the record of settlement. I find Mr Le Sueur should pay the outstanding payment being \$2,500 within 28 days of the date of this determination.

Reimbursement of the lodging fee

[18] Mr Sadeghi is self-represented, and no legal fees have been incurred with this matter, but there has been payment of the lodging fee of which Mr Sadeghi is entitled to be reimbursed for.

³ Employment Relations Act, s149(3).

⁴ Employment Relations Act, ss137(1) and 151.

⁵ Employment Relations Act, ss 139 and 140(6).

Summary of orders

[19] Mr Terrence Le Sueur is ordered to make payment to Hamid Sadeghi, within 28 days of this determination:

- (a) \$2,500, that being the outstanding sum due under the record of settlement; and
- (b) disbursements of \$71.55 for the lodgement fee in this matter.

Andrew Gane
Member of the Employment Relations Authority