

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 430
3172846

BETWEEN	AMANDEEP SINGH First Applicant
AND	SIMRAN KAUR Second Applicant
AND	LOVEPREET SINGH Respondent

Member of Authority:	Antoinette Baker
Representatives:	Anjela Sharma, counsel for the Applicants Paul Mathews, advocate for the Respondent
Investigation Meeting:	26 August 2020 by Zoom
Submissions received:	3 August 2022 from the Applicants 22 August 2022 from the Respondent
Determination:	31 August 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 13 May 2022 Mr Amandeep Singh and Ms Simran Kaur (the Applicants) lodged a claim for compliance and a penalty under ss 137 (1)(a)(iii) and 149(4) of the Employment

Relations Act 2000 (the Act). They claimed that Mr Lovepreet Singh had not fully complied with a settlement reached under s 149 of the Act signed on 25 February 2022 (the settlement).

[2] Mr Lovepreet Singh paid the compensatory sum to the Applicants as agreed in the settlement. He did not pay the Applicants' representative costs (the costs) portion of the settlement within the agreed timeframe. The Applicant's representative is Ms Sharma.

[3] The settlement was between the Applicants and Mr Lovepreet Singh and included the following:

4. Lovepreet Singh shall pay Anjela Sharma within 14 days of the date of provision of an invoice, the sum of \$21,500.00 plus GST [\$24,725.00] as a contribution towards the legal costs of the Applicants.

...

8. This is a full and final settlement of all matters between the parties arising out of their employment relationship and the ending of that relationship and any claims the Applicants may have against Sandu [sic] Hospitality Limited and Gupreet [sic] Singh. The Applicants shall withdraw matters 3140302 and 3140323 from the Employment Relations Authority forthwith with no issue as to costs.

[4] At paragraph 8 the settlement records the names of the respondents who along with Mr Lovepreet Singh formed the trio of respondents in the two Authority claims that the Applicants agreed to withdraw.

[5] Ms Sharma invoiced Mr Lovepreet Singh. The date for payment according to the 14 days' time frame in the settlement was 17 March 2022.

[6] When the invoice was not paid Ms Sharma contacted Mr Lovepreet Singh's two employment advocate representatives. One indicated that he would reiterate to Mr Lovepreet Singh that he had to meet his settlement obligations.

[7] Mr Lovepreet Singh emailed Ms Sharma on 28 March 2022 saying,

Hi Angela, I don't have money to pay your invoice. Im not running away. I need some time to arrange funds. Please find attached screenshot of my bank accounts. Thanks.

[8] The screen shot sent with the above email included sums against various accounts with no reference name for the accounts.

[9] Ms Sharma communicated payment was due but there was an agreement to an extension of time to pay by 5 April 2022.

[10] On 6 April 2022 Mr Lovepreet Singh asked Ms Sharma to resend the invoice. Ms Sharma did this with a communication that the amount had to be paid immediately.

[11] It is agreed that the following payments were then made to Ms Sharma:

a.	7 April 2022	\$3,000.00
b.	11 April 2022	\$3,000.00
c.	27 April 2022	\$3,000.00
d.	2 May 2022	\$5,000.00
		<hr/>
		\$14,000.00

[12] On the morning of 27 April 2022 (before the 2 May 2022 payment) Ms Sharma emailed Mr Lovepreet Singh's two representatives and Mr Lovepreet Singh:

I have instructions to proceed to the ERA. It should be noted that only \$6000 has been received as at today. Even if a further \$3000 has been paid this would only total \$9000.

[13] On the afternoon of 27 April 2022 Mr Lovepreet Singh's representatives emailed to Ms Sharma that they no longer represented Mr Lovepreet Singh.

[14] The Applicants lodged their claim for compliance and a penalty on 13 May 2022 when there remained a \$10,725.00 balance still to be paid for the costs.

[15] Submissions set out that Mr Lovepreet Singh then made the following payments referenced from two different corporate entities:

e.	8 June 2022	\$2,000.00
f.	8 June 2022	\$725.00
g.	15 June 2022	\$2,000.00
h.	15 June 2022	\$2,000.00
i.	22 June 2022	\$2,000.00
j.	28 June 2022	\$2,000.00
		<hr/>
		\$10,725.00

[16] Based on the information provided to me, Mr Lovepreet Singh paid the total costs by 28 June 2022.

[17] By the time of the investigation meeting on 26 August 2022, the application for compliance was withdrawn. The Applicants chose to proceed with the application for a penalty.

The Authority's investigation

[18] For the Authority's investigation submissions were lodged before the investigation meeting. Mr Lovepreet Singh engaged representation just over two weeks before the

investigation meeting. At the investigation meeting the representatives were heard from. The parties also attended and answered questions from me.

The issues

[19] The issues are:

- (a) Should a penalty be awarded against Mr Lovepreet Singh?
- (b) How much should be awarded and should any of this be paid to the Applicants?
- (c) Should either party contribute to representation costs of the other?

Law

[20] Section 149 of the Act provides a mechanism for parties to end their employment relationship problem with a full and final binding recorded settlement involving a statutory process overseen and signed off by an authorised mediator (s 149 settlement).

[21] The Authority under ss 149(4), 133 and 135 of the Act has the jurisdiction to award a maximum \$10,000.00 penalty against an individual for each breach of a s149 settlement. Section 136(2) of the Act says the Authority may order the whole or part of any penalty be paid to any person.

[23] Section 133A of the Act sets out that in determining the amount of a penalty I must have regard to 'all relevant factors' including:

- (a) the object of the Act
- (b) the nature and extent of the breach
- (c) whether the breach was intentional, inadvertent, or negligent
- (d) the nature and extent of any loss or damage suffered by any person or gains made or losses avoided by the person in breach
- (e) whether the person in breach has taken steps to mitigate the potential adverse effects

of the breach

(f) the circumstances in which the breach occurred including the vulnerability of the employee

(g) whether the person involved in the breach has previously been found by the Authority or the court to have been engaged in similar conduct.

[24] The Employment Court has set out guidance when considering whether a penalty is to be awarded in the context of statutory breaches. This includes the number and nature of the breaches; the severity of each breach; the ability of the person in breach to pay; and proportionality to ensure that any final penalties awarded are ‘just in all the circumstances.’¹ There is also the need to consider deterrence and to award penalties consistent with similar cases².

Should a penalty be awarded against Mr Lovepreet Singh?

[25] I am satisfied that Mr Lovepreet Singh is liable to a penalty because there is no dispute that he did not comply with the provision to make payment in full for the costs which should have been paid by the 5 April 2022.

How much should be awarded and should any of this be paid to the Applicants?

Nature and extent of the breach

[26] The Applicants submit that there were repeated breaches, and they were serious. I consider this was one breach for the purpose of a penalty as opposed to a matter where there are multiple provisions breached. There is support for this approach in in the Employment Court.³

[27] The delay in meeting the payment of the costs in full was approximately 13 weeks. While I accept that this caused a delay for Ms Sharma to be paid and she will have had to spend time chasing payment and hoping that the appearing part payments resolved the

¹ *Borsboom v Preet PVT Limited* [2016] NZEmpC43 at [151].

² *Lumsden v Skycity Management Limited* [2017] NZEmpC 30.

³ *Nicholson v Ford* [2018] ERNZ 393 at [21] to [26].

matter, I am not satisfied that the Applicants themselves have been affected beyond what I acknowledge was the stress they described in not having matters finally resolved. While it was submitted that their liability to pay Ms Sharma was open to risk, Ms Sharma had not by the time of full payment pursued them for these costs and told me, “she wouldn’t do that.” This means that I find the stress the Applicants describe likely is a result of matters not resolving when they should have and an understandable sense of concern that they had foregone their claims before the Authority for which they had incurred what appears to be considerable costs.

Was the breach intentional, inadvertent, or negligent?

[28] It was submitted for the Applicants that Mr Lovepreet Singh has business interests and could have paid the amount owing hence supporting a deliberate intent not to pay in full. I have no information before me other than what is submitted in general terms by the Applicants about Mr Lovepreet Singh’s business interests.

[29] It was submitted for Mr Lovepreet Singh that he may have misunderstood what he agreed to in the settlement. Mr Lovepreet Singh explained to me that he understood he had agreed to pay the costs 14 days after the invoice was issued. He confirmed that he was represented at the mediation and in the days following when the settlement was further negotiated to its concluded signing. As required by the legislation, the settlement was signed by an appointed mediator following a statutory process. In these circumstances I find Mr Lovepreet Singh knew or ought to have known what he was agreeing to and the terms he was personally obliged to follow.

[30] Mr Lovepreet Singh says he agreed to the settlement thinking he could get the money to pay and then discovered he could not. I find the short time frame between signing the settlement and his email dated 28 March 2022 saying he could not get the money to pay is relevant. This is because it does not support something occurring that dramatically changed the financial situation for Mr Lovepreet Singh that he could not have predicted at the time he signed the settlement. At the very least I find Mr Lovepreet Singh was negligent or lacking

care in the way that he did not more carefully consider his ability to pay by the due date before signing the settlement.

Severity

[31] It is submitted for Mr Lovepreet Singh that the breach was “repeated, sustained and serious.” I have already found I will treat this as one breach for the purpose of a penalty. On the scale of severity, I find it is at the low end. The following will further explain this.

Ability of the person in breach to pay

[32] I was provided with no information to accurately assess any ability of Mr Lovepreet-Singh to make payment. The screen shot he sent to Ms Sharma of what he described as his accounts is at best minimal information to assess someone’s ability to pay a penalty. However, Mr Lovepreet Singh was able, albeit with delay, to organise a series of payments across 13 weeks totalling \$24,725.00. I find that this shows me that by whatever means, he had access to finance. I am satisfied I should not reduce any monetary penalty amount under this heading.

Steps taken to mitigate the potential adverse effects of the breach

[33] It has been submitted for Mr Lovepreet Singh that he was continuing to pay by instalments given the Applicant’s “good faith” in allowing him an extension to pay. I accept that he was continuing to make instalment payments but there was no apparent regularity with this, and any agreement was only to an extension to pay in full by 5 April 2022. The effect of his unilateral decision to make instalment payments in the context of me finding he likely had access to finance, lengthened rather than mitigated the continued uncertainty for the Applicants about the matter coming to an end. That said, I acknowledge some mitigation occurred after the Applicants lodged their compliance application to the end result of payment in full on 28 June 2022.

The circumstances in which the breach occurred including the vulnerability of the employee

[34] While I have accepted that the Applicants felt stressed about the continuing problems with bringing their two employment relationship problems to an end, they received their compensation as recorded in the settlement. Ms Sharma did not pursue them for her costs when these were not paid to her in time. I find that this is not a case where there has been a significant impact on the Applicants due to a breach that directly affected their financial position, which it may have been had their compensation not been paid to them.

Whether the person involved in the breach has previously been found by the Authority or the court to have been engaged in similar conduct.

[35] I have nothing before me to show that Mr Lovepreet Singh has previously breached obligations similar to this matter.

Deterrence and whether the penalty is 'just in all the circumstances.'

[36] Overall I find that Mr Lovepreet Singh's non-compliance with the settlement dents the confidence that the public has in s 149 settlements as a key mechanism to bring an end to employment relationship problems under the Act. He signed the settlement to agree to pay not insignificant amounts of money in exchange for the Applicants not pursuing their two respective claims in the Authority. I have found a level of negligence in relation to Mr Lovepreet Singh signing the settlement when he could not be sure he could access the funds in full within the agreed time to meet Ms Sharma's costs. This may be generous to Mr Lovepreet Singh. However, I must balance this with his continued albeit intermittent payments until Ms Sharma's costs were paid. He also responded to demands for payment when Ms Sharma persevered. This contrasts with cases where the person in breach has ignored requests for payment or has not paid at all.

Proportionality

[37] I have considered other comparable situations where the Authority has imposed penalties for breaches of s149 settlements. A penalty would likely fall in the range of \$500 to \$2,000. I find this matter is at the lower end of seriousness.

[38] Taking all the circumstances into account, including that Mr Lovepreet Singh paid the compensatory payments as agreed in the settlement, that he has paid in full the costs contribution in question, and that he proffered a verbal late apology at the investigation meeting to both the Applicants and Ms Sharma, I fix the penalty at \$500.00 and direct that the full amount is to be made available to the Applicants being \$250.00 each.

Conclusion on penalty

[39] Within 28 days of the date of this determination being issued Mr Lovepreet Singh is to pay Simran Kaur \$250.00 and Amandeep Singh \$250.00.

Costs

[40] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[41] If they are not able to do so and an Authority determination on costs is needed, Simran Kaur and Amandeep Singh may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Mr Lovepreet Singh would then have 14 days to lodge any reply to that memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[42] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless circumstances or factors required an upward or downward adjustment of that tariff.⁴

Antoinette Baker
Member of the Employment Relations Authority

⁴ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808, 819-820 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135 at [106]-[108].