

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 398  
3286319

BETWEEN                      YADWINDER SINGH  
   Applicant  
  
AND                                BIMLESH CHAND  
   Respondent

Member of Authority:      Robin Arthur  
  
Representatives:            Nathan Santesso, advocate for the Applicant  
   Rajendra Chaudhry, counsel for the Respondent  
  
Investigation:                24 June 2024 by telephone conference  
  
Determination:               3 July 2024

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1]     Yadwinder Singh applied to the Authority for orders requiring Bimlesh Chand to pay missed instalments of payments due under a settlement agreement signed on 13 November 2023. An authorised mediator had certified the parties' agreement under s 149 of the Employment Relations Act 2000 (the Act).

[2]     Certification under s 149 confirmed the agreement was final, binding, enforceable and, except for the purpose of enforcing its terms, could not be subject to action or review in the Authority or the Employment Court.<sup>1</sup>

[3]     A person who breaches a term of a certified settlement agreement is liable to a penalty imposed by the Authority. Mr Singh asked for a penalty to be imposed on Mr Chand for missing agreed payments.

---

<sup>1</sup> Employment Relations Act 2000, s 149(3).

[4] Although the parties had agreed their terms of settlement would be confidential, it was necessary for the purposes of this determination to disclose certain terms and details of the agreement.

[5] The parties agreed that NKA Services Limited and its director Mr Chand would be jointly and severally liable for payment of outstanding salary and holiday pay owed to Mr Singh. These wage arrears were to be paid in instalments of equal value over 13 months.

[6] Payments were to begin on 31 December 2023 with the 12 further instalments to be paid on the last day of the month.

[7] The company paid some but not all of the amount due as instalments on 31 December 2023 and 31 January 2024. It did not pay any of the 29 February instalment.

[8] On 24 March 2024 NKA Services Limited went into liquidation on the application of the Commissioner of Inland Revenue. Under the terms of the settlement agreement Mr Chand remained liable for payments due to Mr Singh.

[9] The shortfall in those payments at the date of this determination comprised the remainder of payments due for the December 2023 and January 2024 instalments and all of the instalments due on 29 February, 31 March, 30 April, 31 May and 30 June 2024.

### **Orders sought**

[10] Mr Singh applied to the Authority for orders requiring Mr Chand to comply with the settlement agreement, to pay a penalty for breaching the agreement and to pay the costs of applying to the Authority for those orders.

[11] By telephone conference on 24 June Mr Chand's counsel sought and was granted a seven-day adjournment while the parties explored whether they could resolve matters without the need for an order by the Authority. The representatives were advised the Authority would go ahead and issue a determination after 1 July 2024 if the matter was not resolved between them.

[12] On 3 July 2024 Mr Singh's representative advised there was no resolution and asked the Authority to proceed.

## **Issues**

[13] The issues for resolution were whether the orders for compliance and a penalty sought by Mr Singh should be made and whether any order for costs should be made.

## **Assessment**

[14] The Act allows the Authority to order payment by instalments where a compliance order relates to payment of a sum of money to an employee but “only if the financial position of the employer requires it”.<sup>2</sup> However, in this case, the final, binding and enforceable agreement made by the parties already provided for instalments and was not subject to adjustment by the Authority. Even if the Authority could adjust the amount or frequency of the instalments agreed in an agreement certified under s 149, Mr Chand had not established his financial position “requires” this.

## **Orders**

### *Compliance order*

[15] Because settlement agreements certified under s 149 of the Act are made to be kept, Mr Singh was entitled to the orders he sought.

[16] Accordingly, under s 137(1)(iii) and s 151 of the Act, Mr Chand is ordered to pay Mr Singh the remainder of the amounts due on 31 December 2023 (\$346), 31 January 2024 (\$346), 29 February (\$1,000), 31 March (\$1,000), 30 April (\$1000), 31 May (\$1,000) and 30 June (\$1,000).

[17] The total due of \$5,692 must be paid by no later than 14 days from date of this determination.

[18] Mr Chand also remains liable for instalments due at the end of the months from July to December 2024.

### *Penalty*

[19] A penalty must also be imposed to mark the serious nature of a failure to pay amounts agreed under certified s 149 agreements. Failure to abide by those terms undermines the integrity of those provisions which resolve a substantial portion of employment relationship problems in Aotearoa New Zealand.

---

<sup>2</sup> Employment Relations Act 2000, s 138(4a).

[20] As a first known offence and taking account of the difficulties associated with liquidation of the company, the penalty is set at \$500, an amount of the lowest end of the range for cases of this type. This penalty is imposed to mark Mr Chand's failure to pay instalments due in full and on time and to discourage other employers from failing to pay amounts due under such settlement agreements.

[21] The penalty, ordered under s 135 and s 149(4) of the Act, must be paid to the Authority by no later than 31 August 2024. When the penalty is paid to the Authority, the Authority must transfer that amount into a Crown Bank Account.

[22] As a result of these proceedings Mr Chand is also on notice that failure to pay the amounts due as monthly instalments in the months from July through to December 2024 renders him liable to a further penalty.

#### *Costs and expenses*

[23] Mr Chand must also pay \$500 as a contribution to the costs incurred by Mr Singh in bringing this application and reimburse him for the expense of the fee of \$71.55 paid to lodge his application in the Authority. This sum of \$571.55 must be paid to him by no later than 31 July 2024.

#### **Summary of orders**

[24] Mr Chand must pay Mr Singh \$5,692 within 14 days of the date of this determination.

[25] Mr Chand must pay Mr Singh \$571.55 as costs and expenses by no later than 31 July 2024.

[26] Mr Chand must pay the penalty of \$500 to the Authority by no later than 31 August 2024.

Robin Arthur  
Member of the Employment Relations Authority