

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 694
3186199

BETWEEN CYPRIAN SINGH
 Applicant

AND NORTHPOWER LIMITED
 Respondent

Member of Authority: Nicola Craig

Representatives: The applicant in person
 Alison Maelzer and Matthew Morrissey, counsel for the
 respondent

Investigation Meeting: 6 December 2022 by audio-visual link

Submissions [and further 6 December 2022 from the applicant
Information] Received: 6 December 2022 from the respondent

Date of Determination: 23 December 2022

DETERMINATION OF THE AUTHORITY

- A. Northpower Limited breached a settlement agreement with Cyprian Singh.**
- B. Northpower Limited is ordered to comply with clause 7 of the settlement agreement by making the specified statement to the remaining three employees who have not yet been notified, by 17 February 2023.**
- C. No penalty is imposed.**
- D. Costs are reserved.**

What is the Employment Relationship Problem?

[1] Cyprian Singh entered into agreed terms of settlement with his former employer Northpower Limited (Northpower or the company). The settlement agreement was signed by a mediator from the Ministry of Business, Innovation and Employment on 1 July 2021.

[2] Clause 7 of the settlement agreement required Northpower to provide a statement to Mr Singh's team, as detailed below. Mr Singh argues that Northpower has not fully complied with that requirement and seeks a compliance order and penalty. Northpower considers it has met its obligations and should not be subject to any orders.

How did the Authority investigate?

[3] At times Mr Singh indicated that he wished his original claims to be investigated by the Authority. However, as he had entered a full and final settlement agreement signed by a mediator, under s 149 of the Employment Relations Act 2000 (the Act) that agreement is final and binding on the parties and cannot be cancelled, even if a party has breached the agreement.¹ Mr Singh agreed to proceed with his claims for a compliance order and penalty.

[4] An investigation meeting was held by audio-visual link on 6 December 2022. Evidence was heard from Mr Singh and from Northpower's Cameron Miller. Submissions were heard at the meeting with the respondent then providing a written synopsis of its submissions.

[5] As permitted by s 174E of the Act this determination has not recorded everything received from the parties but has stated findings and conclusions and specified orders made as a result.

What does clause 7 require?

[6] The settlement agreement requires under clause 7 that:

The employer will provide a statement to the employee's team that the company has looked into the events on 19 September 2019 and its findings were inconclusive.

[7] The events on 19 September 2019 and what followed were the subject of Mr Singh's claims which were settled in the settlement agreement. Mr Singh was represented when those claims were pursued and the settlement agreement signed.

¹ Employment Relations Act 2000, s 149(3).

Was there a breach of the settlement agreement?

[8] There was no obligation in the settlement agreement to inform Mr Singh when the clause 7 statement had been provided. Mr Singh became concerned that the statement had not been provided or not in the manner he envisaged.

[9] In 2022 Mr Singh contacted a Northpower supervisor he used to work with. The supervisor indicated that he had been spoken to by Mr Miller and another manager, along with another staff member from the supervisor's team. He recalled the meeting as being in late 2021.

[10] Mr Singh also expected there to be some texts or emails setting up the meeting and/or some notes, minutes or a meeting attendance register.

[11] Mr Miller was the person responsible for Mr Singh's team in July 2021 and signed the settlement agreement for Northpower. He gave evidence of his recollection that on about 7 or 8 July 2021 he spoke to what he regarded as the team - the UG team. This included the supervisor who Mr Singh later contacted and two other staff but not the other manager referred to above. The supervisor had also been the supervisor of the project on 19 September 2019 so it seemed to Mr Miller to be the right team to speak to.

[12] This was an informal general catch-up meeting held in the supervisor's area at the depot. Mr Miller wanted to have the discussion in a relaxed manner. There was no attendance register or file note made.

[13] Mr Miller told the group that Northpower had investigated Mr Singh's allegations (regarding 19 September 2019) and the results of the investigation were inconclusive. At least some members of the team laughed or sniggered when Mr Miller brought up the investigation. Mr Miller did not laugh, instead saying the group needed to be respectful of Mr Singh's perspective but that the matter was now closed and did not need to be discussed further.

[14] I found Mr Miller's evidence reliable. Mr Singh told the Authority that he had a lot of respect for Mr Miller. I conclude that Mr Miller did what he genuinely thought was required to meet clause 7.

[15] In the context of a regular catch-up meeting I do not find it unusual that there is no documentary evidence setting up the meeting or recording what was said.

[16] Clause 7 is not very specific about aspects of what was to be involved with the making of the statement. Mr Singh describes himself as a fair and reasonable person. Having heard from Mr Singh, not all of the aspects are problematic from his perspective but some are:

- Written or oral statement – the form is not specified but Mr Singh was satisfied with an oral statement.
- Maker of the statement – Mr Singh was satisfied with Mr Miller being involved.
- Timing of the statement – there is no specification. Having accepted Mr Miller’s evidence, I find that the statement was made in July 2021, within a reasonable period after the settlement agreement was concluded.
- Approach to the statement – Mr Singh objects to Mr Miller approaching the group discussion in a casual way. Mr Miller used the description “*relaxed*”. This seems to have been to avoid the sense of reading out a formal statement, which might suggest to some that Mr Miller was being required to make a statement. Mr Miller’s approach was not light-hearted and was within the realm of what the settlement agreement required.
- Environment where the statement was made – Mr Singh did not believe that the statement should have been made in an open place, thinking a closed room was appropriate. But there is nothing in clause 7 about the environment in which the statement would be made. Mr Miller indicated there was possibly a couple of other people around but some metres away. Perhaps a requirement for a reasonable environment or context could be read in to the clause, but I do not see Mr Miller’s decision to deal with the statement in the supervisor’s area as unreasonable.

[17] The fact people laughed is not necessarily a reflection of the statement having been improperly made. There is little direct evidence as to why there was laughter. Mr Miller thought it was because the event being referred to had occurred two years earlier. He then took the appropriate step of saying that Mr Singh’s perspective should be respected.

[18] The remaining question is whether the right people or group were notified. Mr Singh accepts that if team members had left Northpower’s employment, the company did not have to

notify them. He does expect that those who had moved within the organisation should have been informed.

[19] Mr Miller notified the UG team as it was at the time of the settlement agreement. He did not think to speak to former members of the team. The three people Mr Singh identifies as having not been spoken to, whom he thinks should have been, had left for another team or depot.

[20] Mr Miller understood the supervisor at the catch up was Mr Singh's team supervisor but this was clarified by Mr Singh. Mr Singh's immediate team was supervised by another person who now works elsewhere at Northpower and has not received the statement.

[21] There was some fluidity to the workings of the team structure. Mr Singh was in a team but crews were pulled together for particular jobs, depending on the nature of the work. Mr Singh identifies that two teams were brought together for the project work on 19 September 2022. This is the group including both supervisors mentioned above and five other men, including himself.

[22] Mr Singh wishes the team who were involved on 19 September 2019 to be notified. There is uncertainty about who was in the team or which team was being referred to in clause 7. A reasonable interpretation is the team involved on 19 September 2019 as the statement is clearly about events on that date. Alternatively, "*the employee's team*" would be the smaller team Mr Singh was in at the time of his departure, which appears to have included the same three people who did not receive the statement, having moved elsewhere.

[23] Northpower breached clause 7 by not ensuring that all of Mr Singh's team received the statement.

[24] In an open offer a few weeks before the investigation meeting Northpower maintained that it was not in breach but offered to make the same statement to the three other employees if Mr Singh withdrew his claim. He refused to do so, saying he was not prepared to drop the case.

Should Northpower have to comply?

[25] I have considered whether Northpower should be subject to a compliance order. It has shown willingness to explore and respond to Mr Singh's concerns.

[26] Northpower's open offer was to speak to the three other employees. This supports there being no particular difficulty with that being arranged. Mr Miller was willing to speak to them. I have considered whether it is sufficient to simply allow that to happen rather than issuing an order. But given Mr Singh's views it is better to make an order clearly establishing what is required to comply and set a time within which that is to happen.

[27] Mr Singh wants a statement made to all members of the team together, so that in effect some of them would hear it again. The clause is not specific about all those involved at the having to be provided with the statement at the same time. One can imagine a situation where one or more of the group was away sick or on leave when the statement was made, with them needing to be informed later. I do not consider that the company should be required to bring together the whole group. It would however be free to do so if it wished.

[28] Northpower Limited is ordered to comply with clause 7 of the settlement agreement by making the specified statement to the remaining three employees who have not yet been notified, by 17 February 2023.

Should a penalty be imposed?

[29] Mr Singh describes himself as being very offended and disappointed at what he describes as the careless and disrespectful way that Northpower dealt with this matter. Mr Singh found the reference to laughter as hurtful but as indicated above, it is not established that Northpower was to blame.

[30] I have accepted that Mr Miller made the statement in on 7 or 8 July 2021, which is within a reasonable time after the settlement agreement was signed. He decided to take a low-key approach to the announcement so that it did not seem odd. That was understandable. There is no challenge about the content of the statement. The only issue is a narrow one of it not going to all the right people.

[31] Northpower co-operatively examined Mr Singh's concerns. Mr Miller apologised during the investigation meeting to Mr Singh, saying he did not realise how much the statement meant to Mr Singh.

[32] The agreement does not expressly identify the manner or context for delivery of the statement, leaving some room for different approaches. I do not consider that this was a deliberate breach. It is a one-off situation. No penalty should be imposed.

Costs

[33] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and a costs application is made the Authority would take into account the fact that Mr Singh has succeeded in his compliance order claim but not obtained a penalty order. The Authority's usual notional daily tariff and any factors requiring an upward or downward adjustment would also be considered.²

[34] A party seeking costs should lodge and serve a memorandum on costs within 14 days from 4 January 2023, when the Authority office reopens for the year. From the date of service of that memorandum the other party would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

Nicola Craig
Member of the Employment Relations Authority

² See www.era.govt.nz/determinations/awarding-costs-remedies.