

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

P

[2024] NZERA 566
3292079

BETWEEN

PARVINDER SINGH
Applicant

AND

ROADSTAR TRANSPORT
LIMITED
Respondent

Member of Authority: Eleanor Robinson

Representatives: Sunny Sehgal, Advocate for the Applicant
Khuswinder Singh for the Respondent

Investigation Meeting: On the papers

Submissions: 11 and 18 September 2024 from the Applicant
None from the Respondent

Determination: 23 September 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Mr Parvinder Singh, claimed in a Statement of Problem lodged on 18 April 2024 that the Respondent, Roadstar Transport Limited (Roadstar), had not complied with clause 3 of a mediated Record of Settlement (the ROS).pursuant to s 149 of the Employment Relations Act 2000 (the Act).

[2] On 13 August 2024 Mr Sehgal confirmed that all monies due to be paid to Mr Singh in accordance with clause 3 of the ROS had been paid, however Mr Singh was seeking remedies arising from a breach of the ROS terms.

The Authority's investigation

[3] During a case management conference call held on 21 June 2024 both parties were directed to file witness statements and any supporting documentation by 3 and 17 July 2024.

[4] On 13 August 2024 Mr Sehgal confirmed that Roadstar had made the payments set out in clause 3 of the ROS.

[5] The parties were invited to lodge any submissions in respect of the remaining issue for determination by 20 August 2024.

[6] After prompting from the Authority, the Applicant filed submissions on 11 September 2024, but none have been received from the Respondent.

[7] The parties agreed to this matter being determined on the papers.

Issues

[8] The issues requiring investigation are whether or not a penalty should be ordered against Roadstar for breach of a ROS, and if so, in what quantum.

Relevant Background

[9] Mr Singh was an employee of Roadstar whose employment terminated on 25 December 2023.

[10] Following the termination of his employment, Mr Singh and Roadstar entered into a ROS which they signed on 15 March 2024 and which was certified by a mediator on 28 March 2024 under s 149 of the Employment Relations Act 2000.

[11] Clause 3, with some details redacted, of the ROS stated:

- 3.1 Any outstanding salary, holiday pay and any other legislative entitlement (inclusive of statutory holidays) less PAYE and other deductions required by law in the normal manner up to and including the termination date; and for avoidance of any doubts this amount comes to \$[specified sum] (Taxable).
- 3.2 Any outstanding PAYE for Parvinder's wages owed to the IRD must be paid no later than 7 days from the date this agreement is signed.
- 3.3 \$specified amount) + GST ... on receipt of the invoice from Migrants Associated Limited. This payment will be made no later than 15 March 2024.

[12] The Record of Settlement was certified under s 149 of the Act by the Mediator. That certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms were subject to s 148A, s 149(1) and s 149 (3), i.e. that they:

- a. were final, binding and enforceable; and
- b. could not be cancelled; and
- c. could not be brought before the Authority or the court for review or appeal, except for the purposes of enforcing those terms.

[13] The ROS did not specify a date for payment of the amounts due to Mr Singh under clause 3.1, but the outstanding PAYE for Mr Singh's wages was to be paid no later than 7 days

from the date of the ROS being signed i.e. by 28 March 2024. I consider it reasonable to take that date as the appropriate date by which the monies due to Mr Singh should have been paid.

[14] Mr Singh was also to receive a payment of \$1,500.00 plus GST, upon receipt of an income from Migrants Association Limited by Roadstar, no later than 15 March 2024.

[15] The payments itemised under clause 3.1 were received on 15 July 2024. The payment of PAYE under clause 3.2 was made at the end of July. It is not clear when Mr Singh received the amount due to be paid to him pursuant to clause 3.3 of the ROS.

Has there been compliance with clause 3 of the ROS?

[16] It is submitted for Mr Singh that the delay in receiving the payments agreed under the ROS caused him substantial stress and financial strain. This was especially so since the amounts due to be paid to Mr Singh were in respect of minimum employment standards entitlements.

[17] Whilst no submissions were made by the Respondent, apologies for the delay in making the payments were made to the Authority with an explanation that it had resulted from unforeseen circumstances affecting the financial viability of the business, rather than a deliberate unwillingness to pay.

[18] Having considered this matter I am satisfied that Roadstar did not comply with clauses 3.1, 3.2 and 3.3 of the ROS within the timescales agreed by the parties.

Remedies

Compliance Order

[19] All amounts due to Mr Singh have been paid and there is no compliance order required.

[20] However payments to Mr Singh, although now effected, were delayed being made some four months after the due dates for payment.

[21] I order that Roadstar pay interest on the amounts due under clause 3.1 of the ROS from the date the amounts were due to be paid until they were paid. Interest is payable in accordance with Schedule 2 of the Interest on Money Claims Act 2016. A calculator to assist in the calculation of interest is available on the Ministry of Justice website.

[22] Interest is to be paid within 28 days from the date of this determination.

Penalties

[23] Mr Singh has sought a penalty in respect of the breach of the ROS.

[24] It is submitted on behalf of Mr Singh that the breaches were in respect of minimum employment entitlements and as such a deterrence effect is merited.

[25] The relevant principles for the Authority to follow when assessing the level of penalty are set out in *ITE v ALA* as being

- To protect the finality and integrity of [s 149](#) settlement agreements by deterring the individual transgressor and others from similar breaches;
- To punish the transgressor;
- Consistency with penalties imposed on others in similar circumstances;
- An assessment of the nature and extent of the breach, including whether it was deliberate, one-off or sustained, with the maximum penalty being reserved for the worst cases;
- Any steps taken by the transgressor to remedy the breach;
- Proportionality in the circumstances.¹

[26] It is submitted for Mr Singh that the breaches caused Mr Singh anxiety, uncertainty and financial strain.

[27] As observed, Roadstar claims the delayed payments were due to external financial pressures on the business.

[28] I find that the breaches may not have been deliberate, but nonetheless Roadstar had been agreed that they should be paid, and the delay caused stress to Mr Singh who had been put to additional cost in having to apply to the Authority to obtain compliance with an agreement freely entered into by the Respondent.

[29] The payments agreed to be paid in the ROS were in respect of minimum employment standards and I find this increases the level of seriousness. The breach was sustained over some four months, and whilst it may have resulted from some unforeseen circumstances, it was not fair to leave Mr Singh waiting for payments to which he was statutorily entitled.

[30] Public confidence in s 149 settlements will be undermined if it is perceived that parties are permitted to breach these settlements with impunity. It is important that the parties can have confidence in the enforceability of the terms of agreed settlements.

¹ *ITE v ALA* [2016] NZEmpC 42 at [61].

[31] I order that Roadstar Transport Limited is to pay a penalty of \$1,500.00 to the Authority to be paid to the Crown Trust Account. \$500.00 of this amount is to be paid to Mr Singh. Payment is to be made within 28 days of the date of this Determination.

Filing Fee

[32] Roadstar Transport Limited must also reimburse Mr Singh the filing fee of \$71.56 within 28 days of the date of this Determination.

Orders

[33] I have made the following orders:

- **Roadstar is to pay interest to Mr Singh in respect of the period between when the agreed payments to Mr Singh under s 3.1 of the ROS were due to be paid and the date when they were paid;**
- **Roadstar is to pay a penalty of \$1,500.00, of which \$500.00 is to be paid to Mr Singh;**
- **Roadstar is to pay Mr Singh \$71.56 in respect of the Authority filing fee;**
- **All payments are to be made within 28 days of the date of this determination.**

Costs

[34] It is submitted for Mr Singh that he should be awarded costs. On the basis that he had incurred costs in the enforcement of the ROS, he is seeking an uplift in costs to total costs, i.e. indemnity costs.

[35] The usual approach in the Authority is to use a tariff-based system for awarding costs, based on the rate of \$4,500 for the first day of hearing, and \$3,500 for each subsequent day. I see no reason for departing from that approach in this case.

[36] The matter was considered on the papers with no investigation meeting taking place, I consider it appropriate to base the level of costs on the normal tariff in the Authority as at the date of filing and to take a half day investigation meeting as the starting point.

[37] Accordingly, Roadstar Transport Limited is ordered to pay Mr Singh the sum of \$2,250.00 towards his legal costs, pursuant to clause 15 of Schedule 2 of the Act.

Eleanor Robinson
Member of the Employment Relations Authority