

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 552
3068852

BETWEEN KYLIE SINKOVICH
 Applicant

AND MOVE ACADEMY LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in person
 Anna Long-McLean, Advocate for the Respondent

Investigation Meeting: By Telephone

Determination: 27 September 2019

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Ms Kylie Sinkovich, claims that the Respondent, Move Academy Limited failed to adhere to clauses 2, 3 and 4 of a mediated settlement agreement.

[2] On 10 June 2019 a Record of Settlement was entered into under s. 149 of the Employment Relations Act 2000 (the Act). The Record of Settlement was signed by the Applicant and by Mr Tim Bowman, on behalf of Move Academy Limited. The Record of Settlement was also counter-signed by a Mediator employed by the Ministry of Business, Innovation and Employment (MBIE) on 10 June 2019.

[3] The issue which had been brought before the Authority by the Applicant is that the Respondent has not complied fully with clauses 2,3 and 4 of the Record of Settlement, which state:

2. MOVE ACADEMY LIMITED shall, without admission of liability, pay Kylie Sinkovich on or before the 10th July 2019 the sum of \$4,000.00 in terms of the provisions of s 123(1)(c)(i) of the

employment Relations Act 2000. This amount will be paid by way of direct credit.

3. MOVE ACADEMY LIMITED shall pay Kylie Sinkovich all her outstanding holiday pay.

4. Mr Ingram will supply MOVE ACADEMY LIMITED with an invoice for work undertaken for Kylie Sinkovich and they will make a contribution of \$1000.00 towards her fees on or before 10th July 2019.

[4] 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:

- 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.

Issues

[5] The issues for determination are whether or not Move Academy Limited failed to comply with clauses 2, 3 and 4 of the mediated settlement.

Background

[6] The payment set out in clause 2 of the Record of Settlement was to be paid to Ms Sinkovich on or before 10 July 2019. Her outstanding holiday pay as set out in clause 3 of the Record of Settlement was to be paid.

[7] The payment to Ms Sinkovich's representative as set out in clause 4 of the Record of Settlement was also to be paid on 10th July 2019.

[8] Move Academy Limited has not made any of those payments due initially to a genuine misunderstanding of the implications of a complaint made to the MBIE mediation service, and latterly due to financial constraints.

[9] I determine that Move Academy Limited did not comply with clauses 2, 3 and 4 of the Record of Settlement.

Compliance Order

[10] The payments set out in the Record of Settlement are all outstanding. I accept that the non-compliance situation is attributable partly to a misunderstanding of the mediation complaint status and latterly to the financial circumstances of Move Academy Limited rather than a deliberate intention on its part. However there has been a default in the agreed payment and the circumstances do not wholly absolve Move Academy Limited from bearing responsibility for that default.

[11] From the evidence available to the Authority, I am satisfied that Move Academy Limited has failed to comply with clauses 2, 3 and 4 of the Record of Settlement.

[12] In order to effect compliance with the Record of Settlement, I therefore order Move Academy Limited to pay Ms Sinkovich, no later than 14 days from the date of this determination, the remaining balance of monies arising under clauses 2, 3 and 4 of the Record of Settlement.

Filing Fee

[13] Move Academy Limited is also ordered to pay Ms Sinkovich the filing fee of \$71.56 within 14 days of the date of this Determination.

Costs

[14] While costs are reserved, I note here that, subject to her submissions, Ms Sinkovich represented herself in this compliance application and, unless she incurred legal costs, it is therefore unlikely she has grounds to claim a contribution to any fair and reasonable costs.

**Eleanor Robinson
Member of the Employment Relations Authority**