

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 179
3028071

BETWEEN

LOUISE STEPHENS
Applicant

AND

CONCH RECORDS LIMITED
Respondent

Member of Authority: Eleanor Robinson

Investigation Meeting: 5 June 2018 by telephone

Determination: 5 June 2018

ORAL DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 5 March 2018 a Record of Settlement was entered into under s. 149 of the Employment Relations Act 2000 (the Act). The parties to the Record of Settlement were the Applicant, Ms Louise Stephens, and the Respondent, Conch Records Limited (Conch Records).

[2] The Record of Settlement was signed by the Applicant and by Mr Brent Hollands, Director and Shareholder, on behalf of Conch Records. The Record of Settlement was also signed by a Mediator employed by the Ministry of Business, Innovation and Employment.

[3] The issue which had been brought before the Authority by the Applicant is that the Respondent has not complied fully with clauses 8 and 9 of the Record of Settlement, which state:

8. The employer will provide to the Employee a certificate of service on or before one week from the date of the Agreement that details the period the Employee was employed for along with a list of the duties the Employee performed whilst being employed.

9. The Employee will be paid by direct credit in to the Employee's account number previously given to the Employer, compensation under section 123(1)(c) of the Employment Relations Act 2000, in the amount of \$3,000 (without deductions). The payments will be made in the following manner in days from the date the mediator has signed this agreement:-

- a. \$1,000 within 7 days and then a further,
- b. \$1,000 within 14 days and then a further,
- c. \$1,000 within 21 days.

[4] 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.

Background Facts

[5] Ms Stephens claims that she did not receive the certificate of service pursuant to clause 8 of the Record of Settlement within the period of one week following the date of the Agreement, and that when she had received the certificate of service on 7 May 2018 it had not been accompanied by a list of the duties she performed whilst being employed at Conch Records.

[6] Mr Brent said he had provided the certificate of service, albeit not by the date specified in clause 8 of the Record of Settlement, and confirmed that the list of the duties Ms Stephens had performed whilst being employed at Conch Records had not been provided with the certificate of service.

[7] Ms Stephens further claims that there was a deduction from her final settlement payment due under clause 9 c. of the Record of Settlement.

[8] Mr Brent said that the deduction made from the final tranche of the compensation as set out in clause 9 c. of the Record of Settlement represented 50% of an unpaid bar tab incurred by Ms Stephens prior to her employment with Conch Records coming to a close.

[9] Mr Brent said he had made the deduction in reliance on clause 11 of the Record of Settlement which states:

The Employee will make arrangements to return all Employers property to the Employer on or before two days from the Termination Date.

Compliance Order

[10] I am satisfied that the Respondent has not complied fully with clauses 8 and 9 of the Record of Settlement.

[11] I accept that a certificate of service has been provided to Ms Stephens, however it had not been supplied: "*on or before one week from the Date of the Agreement*". In addition the list of duties Ms Stephens had performed whilst being employed at Conch Records has not been provided with the certificate of service in breach of clause 8 of the Record of Settlement.

[12] I accept that the monies deducted from the final tranche of the compensation payment under the Record of Settlement have now been repaid.

[13] I further accept that clause 11 of the Record of Settlement provides that Ms Stephens will make arrangements to return all company property, however it is unclear that the definition of property includes a bar tab, especially where there is disagreement between the parties on the arrangements regarding payment for drinks.

[14] I note in this context that the payment to be made to Ms Stephens by Conch Records under clause 9 of the Record of Settlement was to be made without deduction.

[15] Accordingly I find that Conch Records to be in breach of clause 9 c. of the Record of Settlement.

[16] I am satisfied that part compliance has now been effected, however Ms Stephens has been adversely affected by the non-compliance of the clauses in the Record of Settlement, and she is seeking compliance with clause 8 and a penalty in respect of the breaches.

[17] **I order that Conch Records provide Ms Stephens with a list of the duties she performed whilst being employed with it within 14 days of the date of this Determination.**

[18] Having considered the principles which should govern the imposition of a penalty¹, I determine that a penalty of \$250.00 is appropriate.

[19] **I order that Conch Records is to pay a penalty of \$250.00, of which 50% is to be paid to Ms Stephens and 50% to the MBIE Trust Account. Payment is to be made within 14 days of the date of this Determination.**

Filing Fee

[20] **Conch Records is also ordered to pay Ms Stephens the filing fee of \$71.56 within 14 days of the date of this Determination.**

Costs

[21] While costs are reserved, I note here that, subject to her submissions, Ms Stephens was not legally represented and, unless she incurred legal costs, it is therefore unlikely she will have grounds to claim a contribution to any fair and reasonable costs.

Eleanor Robinson
Member of the Employment Relations Authority

¹ *Borsboom (Labour Inspector) v Preet PVT Ltd and Warrington Discount Tobacco Ltd* [2016] NZEmpC 143