

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 270
3215099

BETWEEN ANTHONY JAMES TIDEY
Applicant

AND PACIFIC-ASIA
INVESTMENT
MANAGEMENT LIMITED
Respondent

Member of Authority: Alex Leulu
Representatives: Applicant in person
Peter Egden, advocate for the Respondent
Investigation Meeting: On the papers
Submissions and documents received: 20 February 2023 from Applicant
8 May 2023 from Respondent
Determination: 26 May 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Anthony James Tidey was previously employed by Pacific-Asia Investment Management Limited (PAIML). On 13 February 2023, Mr Tidey and PAIML entered into a settlement agreement to resolve an employment relationship problem between them. The settlement was recorded in a record of settlement which was certified in accordance with s 149 of the Employment Relations Act 2000 (the Act) by a Ministry of Business Innovation and Employment mediator.

[2] Mr Tidey says that PAIML has breached the terms of the settlement agreement by failing to pay him sums of money that were due to be paid to him. As a result, he lodged an application to the Authority to issue a compliance order against PAIML for

payment of these outstanding amounts. He has not sought a penalty for non-compliance against PAIML.

[3] PAIML acknowledges its obligation in respect of the settlement agreement and admits that it has failed to pay outstanding amounts to Mr Tidey in accordance with the agreement.

The Authority's investigation

[4] In the interests of avoiding unnecessary costs and time, the parties agreed for the matter to be heard on the papers. Both parties have expressed their position through information provided to the Authority. This includes a submission lodged by PAIML director, Alex Constable.

[5] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[6] The issues requiring investigation and determination are:

- (a) Has PAIML breached the record of settlement dated 9 February 2023 by failing to pay monies owed to Mr Tidey within the agreed timeframes?
- (b) If so, should a compliance order be issued?
- (c) Should either party contribute to the costs of the other party as a result of addressing this application for compliance.

The settlement agreement

[7] The settlement agreement sets out a number of agreed terms including a requirement for PAIML to pay Mr Tidey \$30,000 without deduction. This amount was to be paid in two instalments with \$15,000 to be paid within seven days of the signing of the agreement by a mediator and a further \$15,000 to be paid on or before the day falling one calendar month after the first payment.¹

¹ Clause 3, Record of Settlement 9 February 2023.

[8] The settlement agreement was signed by both parties and certified by a mediator under s 149 of the Act. The effect of certification is that the agreed terms were final and binding and could only be brought before the Authority for the purposes of enforcement.

Compliance order

[9] The Authority has the power to order compliance with any terms of settlement or decision that can be enforced by a compliance order under s 151 of the Act.² A compliance order can be made to enforce any agreed terms of settlement under s 149(3).³

[10] There is no dispute that PAIML has failed to pay the outstanding amounts in accordance with the settlement agreement. PAIML has paid \$8,000 of the \$30,000 that was due to Mr Tidey with an outstanding balance of \$22,000 remaining.

[11] Mr Constable acknowledged the outstanding amounts owing to Mr Tidey. He explains that the reasons for non-payment were due to funding delays caused by the actions of an unreliable third party.

[12] PAIML has failed to comply with the record of settlement. In accordance with s 137(1)(b) of the Act, PAIML is ordered to comply with the record of settlement by paying to Mr Tidey the outstanding amounts due to him. PAIML is required to pay the outstanding amounts within 21 days of the date of this determination.

[13] Any failure by PAIML to comply with the compliance order will entitle Mr Tidey the opportunity to pursue the matter further in the Employment Court or the District Court. The Employment Court has powers to impose a fine not exceeding \$40,000, order property to be sequestered, or impose a sentence of imprisonment not exceeding 3 months. Alternatively, a certificate of determination may be obtained from the Authority to allow enforcement in the District Court.

Costs and reimbursement of filing fee

[14] Neither party was represented and so there is no issue as to the costs.

² Section 137(1)(iii) of the Employment Relations Act 2000.

³ Section 151(1)(a) of the Employment Relations Act 2000.

[15] Since Mr Tidey's application for compliance is successful, it is appropriate that PAIML reimburse him the filing fee of \$71.55 which is also to be paid within 21 days of the date of this determination.

Alex Leulu
Member of the Employment Relations Authority