

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 155
3021157

BETWEEN NICK VANCE
 Applicant

A N D STMB LIMITED
 Respondent

Member of Authority: Nicola Craig

Representatives: Jane Denham, for Applicant
 No appearance for Respondent

Investigation Meeting: On the papers

Information Received: 28 February, 12 March and 2 May 2018 from Applicant
 Nothing received from Respondent

Date of Determination: 10 May 2018

**DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

- A STMB Limited has breached a settlement agreement which it entered into with Nick Vance.**
- B STMB Limited is ordered to comply with the settlement agreement within 14 days of the date of this determination by:**
- (i) paying Mr Vance \$5,000.00; and**
 - (ii) paying \$1,400.00 plus GST for Mr Vance's legal costs.**
- C STMB Limited is ordered to pay Mr Vance the following sums within 14 days of the date of this determination:**
- (i) A penalty of \$1,000.00; and**
 - (ii) \$575.00 as a contribution to his costs and \$71.56 for the filing fee.**

Employment relationship problem

[1] Nick Vance was employed by STMB Limited. STMB Limited (STMB or the company) is a property services company and its sole director and shareholder is Stan James Walsh.

[2] The parties entered into a settlement agreement which was signed by a mediator from the Ministry of Business, Innovation and Employment, under s 149 of the Employment Relations Act 2000 (the Act). The settlement agreement included a requirement on STMB to pay Mr Vance \$5,000 pursuant to s 123(1)(c)(i) of the Act within fourteen days of the confirmation of the settlement. It also required STMB to pay, within the same time period, Mr Vance's legal costs in the amount of \$1,400 plus GST, on receipt of invoice from Mr Vance's representative.

[3] The settlement agreement was signed by the mediator on 1 September 2017.

[4] Mr Vance claims that STMB has breached the settlement agreement by failing to pay him in accordance with the settlement agreement and also failing to make payment for his legal fees in accordance with that agreement.

The Authority's process

[5] Mr Vance filed his claim with the Authority in October 2017 but there was some difficulty with getting the statement of problem served on STMB. An attempt to file at the company's registered office was unsuccessful as there was a problem with the address. It appears that the company no longer operates from that address, although it remains its registered office recorded with the Companies Office.

[6] The statement of problem was then served on the director Stan James Walsh personally on 15 November 2017. This was confirmed by affidavit.

[7] No statement in reply was filed and no other contact has been received by the Authority from STMB Limited, Mr Walsh or anyone on STMB's behalf.

[8] The Authority issued a Minute stating that it had decided to determine the matter without holding an investigation meeting as is permitted by s 174D of the Act.

A timetable was set for evidence and submissions to be filed by both parties and a determination was thereafter to be made on the papers.

[9] Service of the Member's Minute was effected on Mr Walsh on 24 January 2018 and confirmed by affidavit.

[10] Mr Vance subsequently provided an affidavit confirming that neither sum owing under the settlement agreement had been paid. A copy of Mr Vance's representative's invoice was filed.

Compliance order

[11] Under s 137(1)(a)(iii) and s 137(2) of the Act the Authority has the power to order compliance with any terms of settlement which s 151 of the Act provides may be enforced by compliance order. Section 151 applies to any agreed terms of settlement which are enforceable by the parties under s 149(3) of the Act. Section 149(3) provides that agreed terms of settlement which have been signed by a mediator are enforceable by the parties.

[12] I am satisfied that STMB has breached the settlement agreement by failing to pay Mr Vance the sum of \$5,000 pursuant to s 123(1)(c)(i) of the Act within fourteen days of the confirmation of the settlement by the mediator. This remains unpaid. I order that STMB Limited complies with that obligation, within fourteen days of the date of this determination, by paying Mr Vance \$5,000.00.

[13] I am also satisfied that STMB failed to pay, within fourteen days of the date of confirmation of the settlement, Mr Vance's legal costs in the amount of \$1,400 plus GST. I am satisfied that this remains unpaid. I order that STMB Limited comply with its obligation, by paying, within fourteen days of the date of this determination, \$1,400.00 plus GST for Mr Vance's legal costs.

Penalty

[14] Mr Vance seeks a penalty in relation to the non-payment of the amounts owing under the settlement agreement. Under s 133 of the Act the Authority has the jurisdiction to deal with actions for recovery of penalties for any breach of an employment agreement or breach of any provision of the Act. Under s 149(4) of the

Act a person who breaches an agreed terms of settlement to which the section applies is liable to a penalty imposed by the Authority.

[15] I am satisfied that STMB has breached the settlement agreement by failure to pay Mr Vance \$5,000 and to pay \$1,400 plus GST for his legal costs.

[16] Under s 133A of the Act, when determining an appropriate penalty, there are a number of factors which I must have regard to. These include the object of the Act as stated in s 3. Of particular relevance to this case is s 3(a)(v) which refers to promoting mediation as the primary problem-solving mechanism, other than for enforcing employment standards. In this case Mr Vance and STMB agreed to resolve their problem by way of settlement agreement and STMB has then failed to do what it agreed to do.

[17] There are two breaches of the settlement agreement although both relate to payments. Without evidence from STMB it is difficult to assess whether this non-payment was intentional, inadvertent or negligent. However, STMB clearly took on the obligations and so it must be assumed that it is aware at least of its obligation to pay. In terms of the effects of the breaches, Mr Vance has been without the money agreed to be paid to him. I have no other evidence regarding any particular effects on him. There has been no attempt to compensate or provide reparation by STMB.

[18] The maximum penalty for a company is \$20,000.¹ I am also able to order the whole or any part of the penalty to be paid to any person.²

[19] The resolution of employment relationship problems by agreement is an important part of the problem-solving mechanisms provided for dealing with employment relationship problems. It is important that parties to settlement agreements comply with their obligations promptly. In the present case it is now over nine months since the settlement agreement was signed and the respondent has made no payments under it. I consider that deterrents both to STMB and other employers are necessary to ensure that the system works appropriately.

[20] I order STMB Limited to pay a penalty of \$1,000.00 for its breach of the settlement agreement. I am satisfied that this payment should be made to Mr Vance and order that that occur within 14 days of the date of this determination.

¹ S 135(2)(b) of the Act

² S 136(2) of the Act

Costs

[21] Costs have been sought on behalf of Mr Vance. The amount sought is \$500 plus GST along with the filing fee.

[22] Although no attendance at an investigation meeting was needed, there were still requirements to file a statement of problem, arrange for the service of documents and provide an affidavit. I order that STMB Limited pay the sum of \$575 as a contribution to Mr Vance's costs, along with \$71.56 being the filing fee, within 14 days of the date of this determination.

Nicola Craig
Member of the Employment Relations Authority