

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 641  
3363804

BETWEEN	JEAN WILLIAMS Applicant
AND	MATTHEW ROBERTS Respondent

Member of Authority:	Claire English
Representatives:	William Lynch, advocate for the Applicant No attendance for the respondent
Investigation Meeting:	2 October 2025 in Napier
Submissions received:	2 October 2025 from Applicant None received from Respondent
Determination:	13 October 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant, Ms Jean Williams and the respondent, Mr Matthew Roberts, entered into a Record of Settlement countersigned by a Mediator (ROS), regarding the ending of her employment.

[2] Relevantly, the ROS provided for a payment of \$8,000 to Ms Roberts, and a payment of \$10,000 to her representative on account of their costs. Both payments were to be made over time at the rate of \$75 per week. Provision was made in the ROS for the rate of repayment to increase over time, and that if the ROS was breached, that the full outstanding amount would become payable, together with further costs.

[3] Ms Williams evidence is that Mr Roberts initially made the agreed repayments, although I note they were never increased and remained at the starting rate of \$75 per week. Ms Williams representative assisted by sending Mr Roberts weekly invoices as a reminder. Despite this, on many occasions, payment was late. Mr Roberts eventually stopped making payments.

[4] The matter then came before the Authority, with Ms Williams seeking payment in full of the outstanding amounts.

[5] Mr Roberts has attended case management conference calls with the Authority to discuss the progress of this matter. It is recorded that he accepted that he had made late payments and had stopped making payments. He indicated that this was because at the time he could not pay, but that he was expecting to be able to pay in the future. He has also engaged in email correspondence with the Authority about this investigation meeting and was told that it would be held in person and he was expected to attend.

[6] As payments have ceased being made and Mr Roberts has made no contact with Ms Williams or her advocate to discuss any alternative arrangements, Ms Williams now seeks to enforce the ROS in full as provided for in that agreement.

[7] Ms Williams seeks payment of outstanding amounts of \$4,250 to herself and a further \$6,325 in respect of her advocate's costs.

### **The Authority's investigation**

[8] For the Authority's investigation a written witness statement was lodged from Ms Williams in advance.

[9] Ms Williams attended the investigation in person together with her advocate.

[10] Mr Roberts did not attend the investigation meeting. Shortly after the start time of 9.30 am as set out in the Notice of Hearing, I asked the Authority Officer assisting me on this file to call Mr Roberts on the phone number he had previously used to contact the Authority, to remind him that the investigation meeting was occurring and that matters could be determined in his absence. I am advised by the Authority Officer that the phone number rang for some time before going to voicemail. A message was left

for Mr Roberts, but he did not return the call, and nor did he attend the investigation meeting.

[11] This means that I must decide whether to proceed with the investigation meeting in Mr Roberts' absence. I am satisfied that Mr Roberts is aware of the claims against him, and was made aware of the investigation meeting. This is because Mr Roberts has attended case management teleconferences with the Authority and Ms Williams representative where the claims were discussed. The file also indicates that considerable discussion occurred via email around the setting of a suitable date for the investigation meeting, showing that Mr Roberts was asked multiple times for his views prior to this date being set. The Notice of Hearing was then sent to Mr Roberts at the email address he had previously used to contact the Authority. This Notice set out the time, date, and venue for the investigation meeting, and warned the respondent that in the event of non-attendance, a determination could be issued in favour of the applicant and costs could also be awarded against him.

[12] For all these reasons, I am satisfied that it was appropriate to proceed with the investigation meeting.

[13] As indicated, Ms Williams attended in person and answered questions under affirmation from me. Her advocate attended with her and gave oral submissions.

[14] Ms Williams also provided a breakdown of all payments made to her, the date on which they were made, the number of days certain payments were late, or not paid at all, and the amounts that remained outstanding. This document was sent to Mr Roberts at his usual email address on the same day as the investigation meeting. His comments were requested, and time was allowed for him to respond. No response was received.

[15] As permitted by s 174E of the Employment Relations Act 2000 (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**

[16] The issues requiring investigation and determination were:

- (a) Should I order compliance with the ROS in accordance with s 137 of the Act, to require Mr Roberts to pay the outstanding amounts in full and immediately?
- (b) Should I order financial penalties be paid by Mr Roberts personally for breaching the ROS in accordance with s 149(4) of the Act?
- (c) Should part or all of those penalties be payable to Ms Williams?
- (d) Should I order interest be payable on the outstanding sums in accordance with the Interest on Money Claims Act 2016?
- (e) Should costs be awarded in relation to these compliance proceedings?

### **Background**

[17] Ms Williams raised a personal grievance claim in relation to the ending of her employment. She was represented at all relevant times. Her evidence is that she was willing to enter into an agreement with Mr Roberts as an alternative to proceedings, and after some time and effort, she and Mr Roberts entered into the ROS. This was a binding agreement and was counter-signed by a Mediator in accordance with the Act.

[18] The ROS provided for payment of the agreed sums to both Ms Williams and her representatives over time, at the rate of \$75 per week. Ms Williams said that while not perfect, this was acceptable to her as the regular weekly payments gave her certainty, were enough to make a positive difference to her household budget, and she felt that there was also an element of fairness to Mr Roberts in setting the repayments at a level he would be able to meet.

[19] Ms Williams' evidence was that at first, things went well. She and her representative received the payments as agreed. Her representative assisted by sending Mr Roberts an invoice on a weekly basis, which Ms Williams pointed out was effectively a weekly reminder and reduced the amount of work Mr Roberts needed to perform to comply with the ROS. However, the evidence shows that after a few weeks, the payments from Mr Roberts began to be received late. No reason was given for this.

[20] The evidence shows that payments began to be routinely late, with 20 payments being made late to Ms Williams, and 16 payments being made late to her representatives, before payments stopped altogether at the beginning of July 2025.

[21] Payments began to be overdue on 14 July 2025. Ms Williams says that she personally has had no contact with Mr Roberts about this. She says that her representative followed up with Mr Roberts in early July about payments, and was told that he was “contracting” and would be in a better position going forwards. As they live in the same town, she has seen Mr Roberts recently at the Council Offices when she attended on unrelated business. Her evidence is that he appeared well.

[22] The non-payment has had an adverse impact on Ms Williams. She gave evidence that this had affected her household budgeting and accordingly, the well-being of her and her children. She said this was particularly the case as she recently gave birth and the money which she should have received would have been of great assistance. She also experienced both stress and frustration that Mr Roberts had breached the ROS as she believed that the agreement for weekly repayments was fair and manageable by him, and when he had agreed to these terms after negotiation with her, she had trusted him to abide by them, and yet he had not.

[23] I note that following the filing of these compliance proceedings, Mr Roberts attended a case management conference with the Authority where he accepted he had not paid as required by the ROS. He said that he was “in a better position now” and expected to be able to pay in the future.

### **Analysis**

*Should the full outstanding amount be paid immediately?*

[24] There is no dispute that Mr Roberts has breached the terms of the ROS with Ms Williams, by persistent late payments, and then persistent non-payment. He himself accepted this. Given the careful financial records provided by Ms Williams, I am satisfied that sums of \$4,250 and \$6,325 remain outstanding.

[25] There is no indication before me as to why this is. What is before me is Mr Roberts’ indication to both the Authority and Ms Williams’ representative that he is “in a better position” and has some capacity to make payments.

[26] Ms Williams entered into a compromise agreement to resolve her personal grievance directly with Mr Roberts rather than continue proceedings in the Authority. In doing so, she agreed to accept part payment of certain sums, rather than requiring Mr Roberts to continue with Authority proceedings and rather than requiring immediate payment. I have no doubt that these terms, and especially the agreement for payment

over time at the rate of \$75 per week, were beneficial to Mr Roberts as well as to Ms Williams.

[27] The ROS also provides that “if any breach of this agreement occurs, the full amount of money outstanding at the time of the breach becomes payable in full, and enforceable, and further costs and interest shall be applied.”

[28] Ms Williams is entitled to the benefit of this agreement and to the protections of the Act, which provide mechanisms and safeguards for compliance with such agreements.

[29] I order that Mr Roberts pay to Ms Williams the outstanding sums owing under the ROS, being a total payment of \$10,575.00. This payment is to be made to Ms Williams in full with no deductions.

*Should interest be paid on the full outstanding amount?*

[30] I have also considered the claim for interest on the outstanding balance. The ROS provides that interest is payable if the ROS is breached, as I have found occurred. I am also mindful that the Interest on Money Claims Act 2016 provides for the payment of interest on outstanding money at a rate set out in the Civil Debt Calculator tool. I consider it appropriate for me to award interest on the total outstanding amount of \$10,575.00 on and from the date of 14 July 2025 continuing until payment is made in full. Orders are made accordingly.

*Should penalties be payable by Mr Roberts?*

[31] Ms Williams requests that penalties be ordered against Mr Roberts, as provided for in s 149(4) of the Act, which states that “A person who breaches an agreed term of settlement to which subsection (3) applies is liable to a penalty imposed by the Authority.”

[32] A penalty of up to \$10,000 per breach may be made against any individual as per s 135(2)(a) of the Act.

[33] As already said the evidence satisfies me that the ROS was breached through repeated non-payment, despite efforts by Ms Williams (through her representative) to follow up with Mr Roberts. I consider the non-payment to be appropriately globalised and considered as a single breach, e.g. a failure to pay when due.

[34] The law in respect to quantification is well established given the content of s 133A of the Act and cases such as *Borsboom (Labour Inspector) v Preet PVT Limited and Warrington Discount Tobacco Limited*,<sup>1</sup> *A Labour Inspector v Prabh*<sup>2</sup> and *A Labour Inspector v Daleson Investment*.<sup>3</sup> Section 133A requires I have regard to the object of the Act, the nature and extent of the breach(s), whether they were intentional or not, the nature and extent of any loss or damage, steps to mitigate effects of the breach, circumstances of the breach and any vulnerability and finally previous conduct.

[35] The objects of the Act, as set out in s 3 are directly relevant in this case, particularly: promoting mediation as the primary problem-solving mechanism (as the ROS arose out of mediation and with the assistance of an independent Mediator); and reducing the need for judicial intervention (Ms Williams has now been forced to enter into further legal proceedings to obtain what should already have been paid to her). By entering into the ROS and then failing to abide by it, Mr Roberts has flouted key objects of the Act.

[36] I also consider that Mr Roberts's actions were intentional. The requirement of intention is not necessarily about whether the party was aware they were breaching the law. Instead, it is about whether they acted intentionally, in the sense of intending to do the act in question<sup>4</sup>, or failed to take reasonable steps to fulfil their legal obligations.<sup>5</sup> Here the evidence leads to a conclusion the failure is deliberate. Mr Roberts has accepted as much before the Authority. I also bear in mind the repeated weekly reminders provided to Mr Roberts by the issuing of invoices, and the repeated follow-ups made to him by Ms Williams' representative both during and after he stopped making regular payments. Mr Roberts could have been in no doubt as to what was required and that it was important to Ms Williams. Yet he has failed to meet the terms he himself negotiated.

[37] Ms Williams has suffered loss. She has been deprived of money on which she should have been able to rely, and has suffered stress and distress because of it. These losses are obvious and foreseeable results of Mr Roberts' non-compliance.

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<sup>1</sup> *Borsboom v Preet PVT Limited and Warrington Discount Tobacco Limited* [2016] NZEmpC 143

<sup>2</sup> *A Labour Inspector v Prabh Limited* [2018] NZEmpC 110

<sup>3</sup> *A Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12

<sup>4</sup> *Parton v Fifita*, TT 1815/00 DC Auckland, quoted in *MBIE v Sumich*, Auckland TT 4088383

<sup>5</sup> *El-Agez v Comprede Limited*, TT 4121553, at para 18

[38] I find there is also a real need for deterrence both specifically and generally. Ms Williams entered into an agreement with Mr Roberts in good faith, compromising her rights to continue proceedings against him in exchange for the benefits of the ROS. By entering into the ROS and then failing to pay, Mr Roberts has benefitted from the ending of proceedings against him, but has withheld the agreed benefits from Ms Williams. He has undermined not just the objects of the Act, but the mediation and settlement process. This has in turn required the expenditure of further time and effort in and by the Authority which should never have been required.

[39] With respect to severity I note the judgement of the Court in *Preet* suggests failures to pay proper entitlements should be assessed at 80%.<sup>6</sup> I consider Ms Williams is entitled to payment under the ROS, and this is an appropriate starting point. While there is some evidence that Mr Roberts has ability to pay, I am also aware that these awards are made against him alone and not a business as a whole. This factor suggests a reduction should be applied.

[40] There is no evidence of similar previous conduct by the respondent and finally also consider consistency and proportionality of the penalty amount. I consider 70% to be the appropriate award. This results in a penalty of \$7,000.00.

[41] The final issue is then to whom the penalty should be paid. I have been asked to make orders that the whole or part of any penalty be awarded to Ms Williams. In short, she has by the inaction of the respondent, been forced to inordinate lengths to get payments which are not disputed. She should therefore share in the penalty and I consider two-thirds (or \$4,620.00) appropriate, with the remaining third (or \$2,380) to be paid to the Crown. Orders are made accordingly.

*Should costs be awarded against Mr Roberts in respect of these proceedings?*

[42] Ms Williams seeks costs at the Authority's usual tariff for a half-day investigation meeting, plus the reimbursement of her filing fee. I also note that the ROS provided for costs to be awarded if any breach of that agreement occurred.

[43] Ms Williams is the successful party, and is therefore entitled to an award of costs.

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<sup>6</sup> See *Preet*, at paragraph [167] which suggests at starting point of 80% for minimum wage breaches, and paragraph [171] which suggests a starting point of 70% for failures to pay for Holidays Act entitlements.

[44] The Authority's daily tariff rate is well-known, being \$4,500 for the first day of hearing. In the present case, the investigation meeting was scheduled for a full day, but took up somewhat less than a half day. On balance, I consider it appropriate to make an award of costs at the tariff rate for a half-day investigation meeting, taking into account the time required to prepare and attend the meeting, and that a full day was required to be set aside. The ROS also provides for costs to follow such an event. No arguments are made for any adjustments to the tariff, so I make none.

[45] As the successful party, Ms Williams is also entitled to the reimbursement of her filing fee. Orders are made accordingly.

### **Orders**

[46] Mr Matthew Roberts is ordered to pay to Ms Jean Williams within 28 days of the date of this determination:

- a. The sum of \$10,575 without deduction in compliance with the record of settlement between the parties;
- b. Interest on the amount of \$10,575.00, commencing on 14 July 2025 and continuing until payment is received in full, calculated in accordance with the Civil Debt Calculator;
- c. The sum of \$4,620.00 without deduction as a partial penalty for non-compliance;
- d. The sum of \$2,250.00 without deduction as a contribution to costs; and
- e. The sum of \$71.55 as the reimbursement of her filing fee.

[47] Mr Matthew Roberts is ordered to pay to the Crown Account within 28 days of the date of this determination the sum of \$2,380 as a partial penalty for non-compliance.

Claire English  
Member of the Employment Relations Authority