

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

2. Hollywood Bakery (Holdings) Limited shall, without admission of liability, pay Naphatsanan Yongsirirungruang the sum of \$10,000 in terms of the provisions of s 123(1)(c)(i) of the Employment Relations Act 2000. This amount will be paid by direct credit to Naphatsanan Yongsirirungruang in two separate instalments of \$5,000 each with the first instalment falling due by 14 May 2020 and the second instalment falling due by 31 May 2020. .

3. Hollywood Bakery (Holdings) Limited will pay \$4,025 (including GST) to Gaze Burt law firm as a contribution to Naphatsanan Yongsirirungruang's legal fees. Following the receipt of a GST invoice from Gaze Burt for that amount, this payment will be paid to Gaze Burt by 31 May 2020.

[5] 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.

Note

[6] The parties agreed to the Authority determining these issues based on the papers currently before the Authority including the Statement of Problem and the Statement in Reply, documents submitted by the parties, and submissions from the parties.

Issues

[7] The issue for determination is whether or not HBHL failed to comply with clauses 2 and 3 of the Record of Settlement.

Background

[8] The payments set out in clauses 2 of the Record of Settlement were to be paid to Ms Yongsirirungruang by 14 May 2020 and the 31 May 2020.

[9] The first instalment which was due to be paid to Ms Yongsirirungruang on 14 May was in fact paid on 29 May 2020. HBHL has failed to pay the second instalment to date and it is still outstanding.

[10] The payment towards Ms Yongsirirungruang's legal costs set out in clauses 3 of the Record of Settlement became payable on 31 May 2020 following receipt of a GST invoice. In accordance with the clause Gaze Burt Lawyers sent a GST invoice to HBHL on 12 May 2020, however HBHL has failed to comply with the clause to date and the payment to Gaze Burt Lawyers is still outstanding.

Compliance Order

[11] The Record of Settlement refers in clauses 2 and 3 to the dates by which the payments should have been made. I find that one instalment payment to Ms Yongsirirungruang was made under clause 2, albeit not by the agreed date, and the second instalment payment to Ms Yongsirirungruang and the invoice to Gaze Burt Lawyers have not been paid.

[12] From the evidence available to the Authority, I am satisfied that HBHL has failed to comply with clause 2 and 3 of the Record of Settlement.

[13] **In order to effect compliance with the Record of Settlement, I therefore order HBHL, no later than 14 days from the date of this determination, to pay the sum of \$5,000.00 to Ms Yongsirirungruang in respect of the second instalment payment.**

[14] **I further order HBHL, no later than 14 days from the date of this determination to pay to Gaze Burt Lawyers the sum of \$4,025.00 plus GST e in respect of Ms Yongsirirungruang's legal costs.**

Interest

[15] Ms Yongsirirungruang has applied for interest to be paid on the outstanding sum due to her. I consider that this is appropriate.

[16] **I order that Ms Yongsirirungruang is to be paid interest on the sum of \$5,000.00 due to her pursuant to Schedule 2, clause 11 of the Act, to be calculated in accordance with the interest on Money Claims Act 2016.**

Penalty

[17] The Act includes provisions encouraging parties to resolve their employment relationship issues between themselves. The Record of Settlement represents such a resolution and therefore the failure by one party to honour the terms of any resulting agreement is a serious matter.

[18] Public confidence in s 149 settlements will be undermined if it is perceived that parties are permitted to breach these settlements with impunity. It is important that the parties can have confidence in the enforceability of the terms of agreed settlements.

[19] In accordance with the principles which should govern the imposition of a penalty¹, Ms Eden submits on behalf of Ms Yongsirirungruang that:

- The breaches of the Record of Settlement by HBHL were deliberate and intentional with the initial breach being made only 7 days after entering into the Record of Settlement;
- There has been no attempt by HBHL to remedy the ongoing breaches or to engage with Ms Yongsirirungruang to explain the breaches, despite the Applicant corresponding with HBHL in an attempt to engage compliance;
- HBHL benefitted by avoiding potential liability in excess of the Record of Settlement sums and avoided further exposure to legal costs, whereas Ms Yongsirirungruang has complied with the Record of Settlement but has not seen the fruits of the compromise of her rights; and
- It is necessary to punish HBHL for its breaches of the Record of Settlement.

[20] I determine that a penalty of \$1000.00 is appropriate in all the circumstances of this case given the intentional nature of the breach of a term of a Record of Settlement freely entered into by the parties.

[21] I order that HBHL is to pay a penalty of \$1000.00, 50% (\$500.00) of which is to be paid to the MBIE Trust Account, and 50% (\$1000.00) of which is to be paid to Ms Yongsirirungruang. Payment is to be made within 14 days of the date of this Determination.

Filing Fee

[22] HBHL is also ordered to pay Ms Yongsirirungruang the filing fee of \$71.56 within 14 days of the date of this Determination.

Costs

[23] Ms Yongsirirungruang has applied for costs.

[11] Costs are at the discretion of the Authority. The principles applicable to awards of costs in the Authority are well established. It is a principle set out in *PBO Limited (formerly*

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

*Rush Security Ltd) v Da Cruz*² that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*³ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

[24] I see no reason for not applying these principles in this case. Ms Yongsirirungruang was the successful party in the matter.

[25] Costs in the Authority are made in accordance with a daily tariff amount which is currently set at \$4,500.00 for the first day of hearing. This matter was determined ‘on the papers’. Costs normally follow the event and Ms Yongsirirungruang is entitled to a contribution towards her costs.

[26] I consider it appropriate to base the level of costs on the normal tariff in the Authority as at the date of filing and to take a half day investigation meeting as the starting point.

[27] **Accordingly HBHL is ordered to pay Ms Yongsirirungruang the sum of \$2,250.00 towards her legal costs, pursuant to clause 15 of Schedule 2 of the Act within 14 days of the date of this Determination.**

Eleanor Robinson
Member of the Employment Relations Authority

² [2005] 1 ERNZ 808

³ [2001] ERNZ 305