

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 750
3348301

BETWEEN JUNSEOK YOON
Applicant
AND ALEX STORE LIMITED
Respondent

Member of Authority: David G Beck
Representatives: Jenifer Silva, advocate for the Applicant
Kwon Hong Lee for the Respondent,
Investigation Meeting: On the papers
Submissions Received: 2 October 2025 from the Applicant
29 October 2025 from the Respondent
Date of Determination: 19 November 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] JunSeok Yoon applied to the Authority for an order pursuant to section 137(1)(a)(ii) Employment Relations Act 2000 (“the Act”) requiring Alex Store Limited to comply with the terms of a settlement agreement made with him. The settlement agreement in dispute was executed by both parties and an MBIE mediator pursuant to s 149 of the Act on 11 November 2024. It provided Mr Yoon be paid a compensatory payment under s 123(1)(c)(i) of the Act in the sum of \$4,540.00 in accord with the following schedule and conditions:

- 1.1 \$1,135 paid within 7 days of the date of the Agreement being signed off by a mediator;

- 1.2 \$1,135 paid on or before 1 December 2024;
 - 1.3 \$1,135 paid on or before 1 January 2025; and
 - 1.4 \$1,135 paid on or before 1 February 2025.
2. Should the employer fail to pay any one of the instalments on the due dates noted above, the Employee may commence enforcement proceedings in relation to all the amounts on the basis that they became payable three days following service by the Employee on the Employer a written notice of breach.

[2] Ms Silva advised that the above amounts have now been paid but all payments were late and as remedies pursuant to s 149(4) of the Act, Mr Yoon seeks penalties for the breaches (to be paid to the applicant); costs and reimbursement of the Authority filing fee.

The Authority Investigation

[3] It was agreed the matter be determined by written submissions.

[4] Ms Silva detailed contact with Kwon Hong Lee (aka Alex) to demand payments being delayed and an application to the Authority was made on 20 December 2024 initially seeking compliance and penalties.

[5] Payment one (due 18 November 2024) was made on 19 November 2024; payment two (due 1 December 2024) was made on 6 December 2024; payment three (due 1 January 2025) was made on 7 January 2025 and payment four (due 1 February 2025) was made on 4 February 2025.

[6] Ms Silva submits the breaches amount to five, being a breach of the obligation to pay the full amounts on demand after the first payment date was missed and the four individual breaches stemming from all payment due dates not being met.

[7] Ms Silva in submissions claimed Mr Yoon suffered distress and financial hardship including missing due automatic payments and that the financial stress following his employment being terminated caused him problems with meeting rent obligations that led to him seeking a personal loan.

[8] Mr Lee the sole director and shareholder of Alex Store Limited (operating a vape store), submitted that his company had insufficient funds and that frequent robberies including ram raids, had caused a business downturn and cashflow problems and that he had suffered health issues in reaction to the stress placed on his business that was also impacted

by a current economic downturn. Mr Lee provided a medical report and copies of Police reports evidencing the impact on his business and a financial assessment from his accountants showing as of 19 September 2025 the business was currently unviable, and liquidation was likely.

Imposition of a penalty and whether it should be awarded to Mr Yoon?

[9] Failure to fulfil the terms of a settlement agreement is a serious breach of the Act. The Authority under s 133 of the Act has the jurisdiction to award a penalty against a defaulting party. In the situation of a company, the maximum penalty is \$20,000 for each breach and I must consider matters set out in s 133A of the Act in determining what if any, amount I should impose including whether the penalty should be paid to the Crown or apportioned. This is a discretionary exercise.

[10] Generally, the approach the Authority takes is guided by the full Employment Court decision of *Borsboom v Preet PVT Limited*¹. *Preet* identified a four-step framework to fixing penalties:

Step 1: Identify the nature and number of statutory breaches. Identify each one separately. Identify the maximum penalty available for each penalisable breach. Consider whether global penalties should apply, whether at all or at some stages of this stepped approach.

Step 2: Assess the severity of the breach in each case to establish a provisional penalty starting point. Consider both aggravating and mitigating features.

Step 3: Consider the means and ability of the person in breach to pay the provisional penalty arrived at in Step 2.

Step 4: Apply the proportionality or totality test to ensure that the amount of each final penalty is just in all the circumstances.²

The nature and extent of the breaches

[11] It is evident that the breach of the settlement agreement “was short lived” in respect of not paying the agreed compensatory amounts in a timely fashion and Mr Lee failing to adequately engage to explain delays when several payment demands were made. The breaches are made out. It is not trite to state that agreements made under s 149 of the Act are compromises in which each party gives up something. For the employee this usually involves a resignation in return for compensation and a commitment to give up personal grievance

¹ *Borsboom v Preet PVT Limited* [2016] NZEmpC 43.

² At [151].

options and the employer gains finality of the matter. In this context, Alex Store Limited appears to have entered an agreement with a schedule of payments that presumably suited their financial circumstances.

Were the breaches intentional, inadvertent or negligent?

[12] Given the payments have been met in a reasonably timely matter although not on time and the explained contextual circumstances, I see on evidence that the breaches were intentional.

What steps have been taken in mitigation?

[13] I acknowledge that the amounts due fell within a very difficult period for businesses and have now been fully addressed.

Severity of breaches

[14] On top of statutory considerations (the aims of the Act), I am obliged following *Preet*, to assess the extent of Alex Store Limited's culpability and take the public interest factor of using the penalty regime as a legitimate deterrent into account.

[15] Whilst the breaches here may appear minor, I must consider that Mr Yoon was in a vulnerable bargaining position having lost his job and income at a difficult period.

Means and ability of the respondent to pay.

[16] I was provided information that showed the company was in a financial crisis and their ability to pay on time was compromised.

Proportionality

[17] This step requires me to stand back and consider consistency with other comparable situations where the Authority has imposed penalties and to assess whether the final figure I determine is in proportion to the extent and severity of the breaches and the context of such. In considering similar cases of breaches of certified settlement agreements, a penalty in this matter would likely fall in the range of \$2,000 to \$3,000.³ However, given the identical breaches have been fully resolved in a reasonably prompt fashion and other factors I have

³ See, for example, *A Labour Inspector v Vishnu Hospitality Limited* [2018] NZERA Auckland 383 (\$2,000); *High v Mighty Rocket Properties Limited* [2018] NZERA Wellington 111 (\$6,000); *Mangos v Metrofloor Contracting Ltd* [2018] NZERA Christchurch 46 (penalty \$1,500); and *Elliot v All Coat Painters Limited* [2019] NZERA 165 (\$3,000) and *Singh v Mega Civil Limited* [2020] NZERA 21 (\$3,000).

considered, it warrants only a modest deterrent penalty against Alex Store Limited that I fix at \$300.00 to be paid in full to Mr Yoon

Order

[18] Within 28 days of the date of this determination being issued Alex Store Limited must pay a penalty to JunSeok Yoon in the sum of \$300.00.

Costs

[19] Costs are at the discretion of the Authority and here JunSeok Yoon was successful in his action for a penalty and has sought costs contribution. I consider that a costs contribution is appropriate, and I fix that amount as \$300.00 and reimbursement of the Authority filing fee of \$74.55 to be paid by Alex Store Limited to JunSeok Yoon within 28 days of the date of this determination being issued.

David G Beck
Member of the Employment Relations Authority