

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2015] NZERA Auckland 359
5553022**

BETWEEN TINA SHIMEN-HILLS
 Applicant

AND PACE COURIERS LTD (A
 DIVISION OF 'EXPRESS
 COURIERS LTD')
 Respondent

Member of Authority: Eleanor Robinson

Representatives: John Coyle, Advocate for Applicant
 Steven Fraser, Advocate for Respondent

Investigation Meeting: On the Papers

Determination: 18 November 2015

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 28 August 2008 a Record of Settlement was signed under s. 149 of the Employment Relations Act 2000 (the Act). The parties to the Record of Settlement were the Applicant, Ms Tina Shimen-Hills, and the Respondent, Pace Couriers Ltd (Pace).

[2] The Record of Settlement was signed by Ms Shimen-Hills and Mr Alan Piper, at that time General Manager of Pace. It was also signed by a Mediator employed by the Department of Labour (now part of the Ministry of Business, Innovation and Employment).

[3] The issue which had been brought before the Authority by Ms Shimen-Hills is that the Respondent has not complied fully with clause 3 of the Record of Settlement, which states:

3. Pace Couriers will provide a Certificate of Service to Tina Shimen-Hills within 14 days of the date hereof.

[4] The parties agreed to the Authority determining this issue based on the Statement of Problem and the Statement in Reply, and on submissions from the parties.

[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 effect of s.149 (3) of the Act, which specifies that 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.

[6] Ms Shimen-Hills claims that Pace did not comply with clause 3 of the Record of Settlement by providing her with a certificate of service within 14 days of 28 August 2008.

[7] Ms Shimen-Hills is seeking compliance and a penalty pursuant to s. 149(4) of the Act. She is also seeking damages for loss suffered as a consequence of the breach.

[8] Pace denies that it failed to comply with clause 3 of the Settlement, and submits that Ms Shimen-Hills is out of time to enforce such compliance.

[9] The parties agreed to the Authority determining this issue based on the Statement of Problem and the Statement in Reply, and on submissions from the parties.

Determination

[10] In the event that a Record of Settlement entered into by parties pursuant to s.149 of the Act is breached by either party, the other may apply to the Authority for a compliance order pursuant to s 137 (1) (iii) and s.151(1) of the Act. A penalty may also be awarded for a breach pursuant to s. 149(4) of the Act.

[11] Damages are not a remedy for a breach of a s.149 Record of Settlement.

[12] A personal grievance claim must be brought before the Authority no more: “*than 3 years after the date on which the personal grievance was raised*”. However Ms Shimen-Hills is not raising a personal grievance, she is seeking compliance with the Settlement, and

there is another time limitation period which applies in that situation. Section 142 of the Act states:

Limitation period for actions other than personal grievances

No action may be commenced in the Authority or the court in relation to an employment relationship problem that is not a personal grievance more than 6 years after the date on which the cause of action arose.

[13] The Record of Settlement was entered into on 28 August 2008. The alleged breach of clause 3 of the Record of Settlement could have occurred, at the latest, 14 days of that date i.e. by 11 September 2011. Ms Shimen-Hills had 6 years from that date in which to commence an action in the Authority i.e. by 11 September 2014.

[14] The Statement of Problem was filed in the Authority on 22 April 2015, which was some 7 months after the expiry of the time limit.

[15] On that basis I determine that Ms Shimen-Hills is outside the time limit in which she can commence an action in the Authority, I cannot assist her.

Costs

[16] Costs are reserved. The parties are encouraged to agree costs between themselves. If they are not able to do so, the Respondent may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Applicant will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

Eleanor Robinson
Member of the Employment Relations Authority