

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2019] NZERA 577
3060915

BETWEEN	LOUISE MELBOURNE Applicant
AND	CHAMBERS PUBLIC RELATIONS LIMITED First Respondent
AND	TRACEY CHAMBERS Second Respondent

Member of Authority: Andrew Dallas

Representatives: Jo Appleyard, counsel for the Applicant
Tracey Chambers for the Respondents

Investigation Meeting: On the papers

Determination: 10 October 2019

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The parties entered into a Record of Settlement (settlement) on 7 November 2018 which was signed by a mediator in accordance with the requirements of s 149 of the Employment Relations Act 2000 (the Act). This is the second time this settlement has been before the Authority.¹

[2] The settlement, which was disclosed to the Authority for purposes of enforcement, contains comprehensive obligations upon the parties. It also binds Tracey Chambers personally as director of Chambers Public Relations Limited (Chambers Limited).

¹ *Melbourne v Chambers Public Relations Limited* [2019] NZERA 223

[3] Ms Melbourne says Chambers Limited and Ms Chambers have again breached the record of settlement by failing to pay her \$8,000 being the balance of an agreed compensatory sum of \$18,000.

[4] Since Ms Melbourne's statement of problem was lodged in the Authority, the balance of \$8,000 was paid to her. Consequently while an application for a compliance order fell away, Ms Melbourne pressed an application for the imposition of a penalty for breach of the settlement by Chambers Limited and Ms Chambers. Ms Melbourne said the penalty should be \$7,500 to be paid on a joint and several liability basis by Chambers Limited and Ms Chambers with \$5,000 being made payable directly to Ms Melbourne.

The Authority's investigation

[5] Having taken into account the surrounding circumstances outlined above, I decided to investigate Ms Melbourne's employment relationship problem on the papers under s 174D of the Employment Relations Act 2000 (the Act). The parties were in agreement with this course.

[6] Having regard to s 174E of the Act, I have not referred to all the information received from the parties or the submissions advanced by the representatives in this determination. However, I record that I have fully considered this material.

Issues

[7] The issues that arose for determination during the Authority's investigation were:

- (i) Should a penalty be imposed on Chambers Limited and Ms Chambers for breach of the agreement; if so in what amount and should any of it be made payable to Ms Melbourne; and
- (ii) Should either party contribute to the cost of representation of the other party?

Claim for penalties

[8] The maximum penalty that can be imposed on Chambers Limited is \$20,000 and the maximum that can be imposed on Ms Chambers is \$10,000. However, Chambers Limited and Ms Chambers are jointly and severally liable under the record of settlement for breaches and, so it follows, for any penalties arising out of the breach.

[9] Ms Melbourne set out the basis for her claim for penalties and undertook an analysis of the amount of such with reference to relevant factors set out in decisions of the Court² and s 133A of the Act, which sets out the criteria to be taken into account when imposing penalties.

[10] Having undertaken this analysis, Ms Melbourne said Chambers Limited and Ms Chambers should both pay penalties of \$3000. Ms Melbourne sought to have \$2000 from each penalty awarded to her by the Authority exercising its discretion to do so under s 136(2) of the Act. Ms Melbourne pointed to a number of factors beyond the circumstances of the breach itself which she said contributed to its seriousness. These factors included:

- a) Chambers Limited and Ms Chambers knew Ms Melbourne had been without work for many months but delayed both the proceedings giving rise to the settlement and the settlement process itself;
- b) Chambers Limited and Ms Chambers then breached the settlement; and
- c) Despite being put on notice, including the commencement of earlier enforcement proceedings, Chambers Limited and Ms Chambers then breached the settlement a second time.

[11] Chambers Limited and Ms Chambers strongly opposed the imposition of penalties for breach of the settlement. Beyond that, however, the submissions advanced were strongly focused on re-litigating a number of matters germane to the substance of the proceedings resolved by the settlement and further, and unrelated, collateral issues between the parties.

² For example, *Borsboom v Preet PVT Limited* [2016] NZEmpC 143 and *Nicholson v Ford* [2018] NZEmpC 132

[12] Having considered the parties' submissions, and after taking all relevant factors into account, I find it appropriate to impose in all the circumstances of the case a penalty of \$3000 on Chambers Limited and a penalty of \$2000 on Ms Chambers. Chambers Limited and Ms Chambers are jointly and severally liable to pay these penalties.

[13] As Chambers Limited and Ms Chambers did not oppose the payment of this penalty to Ms Melbourne, and having regard to all the other relevant circumstances of the case, I have decided to exercise my discretion under s 136(2) of the Act to award \$3000 of the penalty amount to Ms Melbourne.

[14] Chambers Limited and Ms Chambers are severally and jointly liable to pay Ms Melbourne \$3000 for breaching the settlement within 28 days of the day of this determination. The balance of \$2000 must be paid by Chambers Limited and/or Ms Chambers to the Authority for subsequent transfer into a Crown bank account within 28 days.

Costs

[15] The parties were given an opportunity to make submissions on costs. Ms Melbourne sought costs. This was opposed by Chambers Limited and Ms Chambers.

[16] All things equal and considered, costs follow the event in the Authority. Consequently, having carefully considered all relevant matters it is appropriate in all the circumstances for Chambers Limited and Ms Chambers to contribute to Ms Melbourne's costs on the basis of the Authority's "daily tariff" of \$4,500.³

³ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135.

[17] Chambers Limited and Ms Chambers are severally and jointly liable to pay this amount to Ms Melbourne within 28 days of the date of this determination. It is also appropriate that Ms Melbourne be reimbursed the Authority's lodgement fee of \$71.56. This must also be paid to her within 28 days.

Andrew Dallas
Member of the Employment Relations Authority