

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2019] NZERA 578
3060914

BETWEEN JANINE TURKINGTON
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] On 8 November 2018, Janine Turkington, Tracey Chambers and Chambers Public Relations Limited (Chambers Limited) entered into a Record of Settlement (settlement agreement) which was executed in accordance with the requirements of s 149 of the Employment Relations Act 2000 (the Act). This is the second time this settlement agreement has been before the Authority.¹

¹ *Turkington v Chambers Public Relations Limited* [2019] NZERA 229

[2] The settlement agreement, which was disclosed to the Authority for enforcement purposes, binds Chambers Public Relations Limited (Chambers Limited) and Tracey Chambers personally as director of Chambers Limited.

[3] Ms Turkington claims Chambers Limited and Ms Chambers breached the settlement agreement for a second time by failing to pay her the agreed sum of \$10,000 within the timeframe specified.

[4] Subsequent to Ms Turkington lodging her statement of problem in the Authority this amount was paid to her. Consequently, Mr Turkington did not press an application for a compliance order. However, she did press an application for the imposition of a penalty for breach of the settlement agreement by Chambers Limited and Ms Chambers. Ms Turkington 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 her.

The Authority's investigation

[5] Having taken into account all the relevant circumstances of this matter, I decided to investigate Ms Turkington's employment relationship problem on the papers under s 174D of the Employment Relations Act 2000 (the Act). The parties agreed 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 them in this determination. However, I record, for completeness, that I have fully considered all 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 settlement agreement; if so in what amount and should any of it be made payable to Ms Turkington; and
- (ii) If so, should Chambers Limited and Ms Chambers contribute to the cost of Ms Turkington's representation?

Claim for penalties

[8] Under the Act, the maximum penalty that can be imposed on Chambers Limited is \$20,000. And, the maximum penalty that can be imposed on Ms Chambers is \$10,000. Chambers Limited and Ms Chambers are jointly and severally liable under the settlement agreement for breaches and, so it would follow, for any penalties imposed as a consequence of any breach.

[9] Ms Turkington set out the grounds for her claim for penalties. She also provided an analysis of the relevant factors set out in s 133A of the Act, supplemented by decisions of the Court², to be taken into account when imposing penalties.

[10] Ms Turkington said Chambers Limited and Ms Chambers should be jointly and severally liable for penalties of \$7500. Ms Turkington sought to have \$5000 of the aggregated penalty awarded to her through exercise of the Authority's discretion under s 136(2) of the Act.

[11] Ms Turkington identified a number of factors which she said aggravated the breach of the settlement agreement. These factors included:

- a) the breach of the settlement agreement occurred after the Authority had issued a determination in response to the first breach;
- b) Ms Turkington made a number of constructive proposals to resolve all outstanding matters between the parties, including further mediation, which were rejected by Chambers Limited and Ms Chambers;
- c) the collateral actions of Chambers Limited and Ms Chambers delayed proceedings and exacerbated the breach;
- d) Chambers Limited and Ms Chambers conduct in not complying with the settlement agreements has become systematic as demonstrated by other determinations of the Authority; and
- e) proper deterrence is necessary to demonstrate public confidence in mediation settlement processes.

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

[12] Ms Chambers and Chambers Limited vigorously opposed the imposition of penalties for breach of the settlement agreement. However, significant aspects of submissions advanced attempted to re-litigate matters going to the substance of the proceedings resolved by the settlement and raise collateral issues between the parties rather than advance this vigorous opposition too far.

[13] Having carefully considered all the matters raised by the parties, and after taking all relevant factors into account, I find it appropriate to impose a penalty of \$4000 on Chambers Limited and a penalty of \$1500 on Ms Chambers. Chambers Limited and Ms Chambers are jointly and severally liable to pay these penalties.

[14] As neither Chambers Limited nor Ms Chambers opposed the payment of any penalty to Ms Turkington, I have decided to exercise my discretion under s 136(2) of the Act to award \$4000 of the penalty amount to Ms Turkington.

[15] Chambers Limited and Ms Chambers are severally and jointly liable to pay Ms Turkington \$4000 for breaching the settlement within 28 days of the date of this determination. The balance of \$1500 must be paid by Chambers Limited and Ms Chambers on a joint and several liability basis to the Authority for subsequent transfer into a Crown bank account within 28 days.

Costs

[16] As part of her application, Ms Turkington sought costs. This was opposed by Chambers Limited and Ms Chambers.

[17] Ms Turkington has been wholly successful in her claims against Chambers Limited and Ms Chambers. The principle that costs to the successful party consequent to the event of that success generally applies in the Authority. So then, having carefully considered all relevant matters it is appropriate for Chambers Limited and Ms Chambers to contribute to Ms Turkington's costs on the basis of the Authority's "daily tariff" of \$4,500.³

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

[18] 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