

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURĀU ROHE**

[2019] NZERA 685
3070313

BETWEEN YICHAN QIAN
Applicant

AND GRAND TREASURE
FINANCIAL SOLUTIONS
LIMITED
Respondent

Member of Authority: Nicola Craig

Representatives: The Applicant in person
No appearance for the Respondent

Investigation Meeting: On the papers

Submissions [and further Information] Received: 2 October 2019 from the Applicant
Nothing received from the Respondent

Date of Determination: 29 November 2019

DETERMINATION OF THE AUTHORITY

- A. Grand Treasure Financial Solutions Ltd breached a settlement agreement with Yichan Qian and is ordered to pay a penalty of \$800.00 within 28 days of the date of this determination. That sum is to be paid into the account of the Employment Relations Authority, with \$400.00 to be forwarded to Ms Qian and \$400.00 to the Crown account.**
- B. Grand Treasure Financial Solutions Ltd is ordered to pay Ms Qian the sum of \$71.56 for the Authority's filing fee within 28 days of the date of this determination.**

Employment Relationship Problem

[1] Yichan Qian entered into a settlement agreement (the agreement) with her former employer Grand Treasure Financial Solutions Ltd (Grand Treasure or the company). The agreement was signed by a mediator from the Ministry of Business, Innovations and Employment on 28 June 2019.

[2] As of 12 August 2019, when Ms Qian filed her statement of problem in the Authority, she had received the first payment due under the agreement but had not received the second payment which was due on 25 July 2019. A third payment was due on 25 August 2019. Ms Qian sought payment of the outstanding amounts and a penalty against Grand Treasure for breaching the settlement agreement.

[3] I am satisfied that the statement of problem was properly served. No statement in reply was filed on behalf of Grand Treasure. However, on 10 September 2019 the company's director Anson Gao contacted the Authority twice by email on 10 September 2019. Firstly, he advised that his wife was in hospital with a condition he described. Later that day he advised that he had paid all the remaining amounts, noting that "this deal has been closed". Evidence of a bank transfer was provided.

The Authority's investigation

[4] The Authority contacted Ms Qian to check if she wished to pursue a claim now that payment had been received. She replied that she did.

[5] A case management conference was set to be held on 25 September 2019. Mr Gao was sent advance notice of the conference via the email address from which he communicated with the Authority previously. He was not able to be contacted at the time of the conference and it proceeded without him.

[6] I decided to consider this application on the papers and set a timetable for the filing of submissions. A brief email was received from Ms Qian. Nothing was received from Grand Treasure.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded everything received from the parties but has stated findings and conclusions and specified orders made as a result.

Was there a breach of the settlement agreement?

[8] Grand Treasure breached the settlement agreement by failing to pay on time two of the sums due. One sum of \$2,000 was due on 25 July 2019 but was not paid until 10 September 2019. Another sum of \$726.26 was due on 25 August 2019 but was not paid until 10 September 2019.

Should a penalty be imposed?

[9] Under s149(4) of the Act a penalty may be imposed for a breach of a settlement agreement. I have carefully considered whether a penalty should be awarded in this case.

[10] Mr Gao informed the Authority that due to his wife's unwellness, as at 10 September he had not attended any work in the last six weeks. No documentary evidence was provided in support of this.

[11] Although I am not unsympathetic to the Mr Gao's family situation, he committed on behalf of Grand Treasure to making payments to his former employee and thereby avoided having to defend Ms Qian's prior proceeding against the company. In the internet age, accessing documents such as the settlement agreement and making payments does not require physical attendance at a workplace. It was evident that after normal working hours, Mr Gao was able to let the Authority know he would arrange payment, transfer the amount owing and provide proof of that to the Authority within a couple of hours.

[12] I consider that a penalty is appropriate, although I will take Mr Gao's circumstances into account in considering the amount.

What level of penalty is appropriate?

[13] In considering the amount of penalty I have regard to s 133A of the Act as well as the Employment Court's approach in recent cases *Nicholson v Ford*¹ and *A Labour Inspector v Daleson Investment Ltd*². I have little evidence on which to base my assessment.

[14] The maximum penalty against a company is \$20,000. Although there were two payments which were late, for this purpose I regard it as one breach. The starting point is therefore \$20,000.

[15] The resolution through mediation of employment relationship problems is a crucial part of the Act. It is very important that when parties reach agreements at mediation they can be confident that the terms of their agreement will be complied with. However, I take into account that Grand Treasure did eventually make payment. The delay was a little over six weeks for one payment and two weeks for the other. I have no evidence regarding the effects on Ms Qian of the delay although she did indicate that she wanted Grand Treasure punished for the delay.

[16] The breach was intentional in the sense that the obligation to pay was clearly known to Grand Treasure's director who has signed the settlement agreement during a mediation in late June 2019. I accept that Mr Gao may not have been focused on the payment in light of his wife's condition and family responsibilities.

[17] Grand Treasure provided no information regarding its financial position although I note Mr Gao's statement that he had not worked for six weeks.

[18] There is some need for deterrence regarding Grand Treasure as I sense from Mr Gao's email that he simply saw this as in the nature of a late payment under any type of agreement. There is also a need for deterrence of other employers, who should not regard themselves as free to delay payments from times agreed at mediation.

[19] I have considered these matters as well as other cases concerning breaches of settlement agreements and conclude that a penalty of \$800.00 is appropriate. I order Grand Treasure Financial Solutions Limited, within 28 days of the date of this determination, to pay a penalty

¹ *Nicholson v Ford* d [2018] NZEmpC 132.

² *A Labour Inspector v Daleson Investment Ltd* [2019] NZEmpC 12.

of \$800.00. That sum is to be paid into the account of the Employment Relations Authority, with \$400.00 to be forwarded to Ms Qian and \$400.00 to the Crown account.

Costs

[20] Ms Qian was not represented and so no question of representation costs arises. However, I order Grand Treasure Financial Solutions Ltd to pay Ms Qian the sum of \$71.56 for the Authority's filing fee for this application within 28 days of the date of this determination.

[21] Ms Qian also sought the filing fee for her initial application which lead to the mediation where the settlement agreement was reached. However, Ms Qian withdrew that application and no provision was made in the settlement agreement for the payment of that fee and the agreement is stated to be in full and final settlement of all matters arising out of the employment relationship. I am not satisfied that I am able to award the filing for the initial application in those circumstances.

Nicola Craig
Member of the Employment Relations Authority