

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2019] NZERA 690
3067977

BETWEEN JAY DEAN O'BRIEN
 Applicant

AND THE TURNING POINT NEW
 ZEALAND LTD
 Respondent

Member of Authority: Geoff O'Sullivan

Representatives: Jay Dean O'Brien in person
 Georgie Todd, counsel for the Respondent

Investigation Meeting: On the papers

Submissions [and further 25 September and 23 October 2019 from the Applicant
Information] Received: 24 September 2019 from the Respondent

Date of Determination: 3 December 2019

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Jay Dean O'Brien (the applicant) and The Turning Point New Zealand Ltd (the respondent) entered into a record of settlement (ROS) under s 149 of the Employment Relations Act 2000 (the Act). The applicant claims that the respondent has breached the ROS.

[2] The parties agreed that I would deal with this matter on the papers.

[3] The ROS was signed by a mediator employed or engaged by the Ministry of Business Innovation and Employment (MBIE) on 25 January 2018. In signing the ROS, the mediator confirmed that no minimum entitlements had been foregone in reaching the settlement under s 149 of the Act. Further, he had explained that the terms of the ROS were final and binding on and enforceable by the parties and they may not be cancelled, except for enforcement purposes, no party may seek to bring the terms before the Authority.

[4] The applicant in his statement of problem lodged with the Authority says that the respondent breached the terms of the record of settlement by making derogatory and/or disparaging comments against him in breach of paragraph 3 of the ROS. The comments which indeed could be seen as derogatory and/or disparaging were contained in a statement made to the New Zealand Police on 14 December 2018.

[5] The applicant's complaint rests on his belief that the ROS was effective as at 13 November 2018. The ROS does create some initial confusion because it contains three different dates namely a date of 13 November 2018, at the top of the document, a date of 24 January 2019 against the signature of both parties and a further date of 25 January 2018 against the signature of the mediator.

[6] It is however very clear from reading through the document, that both parties signed the ROS on 24 January 2019 and the mediator signed the document on 25 January 2019 not 2018. It follows therefore that compliance with the ROS could be sought at any time from 25 January 2019. Any breach of the ROS after that date could be the subject of penalties.

[7] As indicated above, the applicant has proceeded on the basis that the ROS came into effect on 13 November 2018. That is simply not the case. It came into effect on 25 January 2019.

[8] It follows therefore that there has been no breach by the respondent as the behaviour complained of occurred well prior to the execution of the ROS.

Conclusions

[9] I have found that the applicant was mistaken regarding the date the ROS was signed.

[10] There has been no evidence produced of any breach of the ROS following its execution. I therefore do not make any order for compliance and/or penalties. I reserve the issue of costs.

Geoff O'Sullivan
Member of the Employment Relations Authority