

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2019] NZERA 223  
3048893

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: 15 April 2019

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The parties entered into a Record of 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).

[2] The record of 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).

[3] Ms Melbourne says Chambers Limited and Ms Chambers breached the record of settlement by paying her only \$1000 of a \$10,000 agreed sum. Ms Melbourne initially sought a compliance order in the Authority requiring the balance of \$9,000 to be paid. A statutory demand was also issued in the High Court. However, not long after the statement of problem was lodged in the Authority, this money was paid to Ms Melbourne by Chambers Limited and Ms Chambers via their then solicitors.

### **The Authority's investigation**

[4] 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.

[5] 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**

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

- (i) Should a penalty or penalties 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
- (iii) Should either party contribute to the cost of representation of the other party?

### **Claim for penalties**

[7] Consistent with the Act, there is a significant public interest in resolving employment relationship problems at the lowest possible level. A record of settlement is a final, binding and enforceable document. For mediated outcomes to be successful, parties need to have confidence that records of settlement will be complied with.

[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, as was correctly observed by Ms Melbourne, Chambers Limited and Ms Chambers are jointly and severally liable under the record of settlement for breaches.

[9] Ms Melbourne set out the basis for her claim for penalties and undertook an analysis of the amount of such with reference to the decision of the Court in *Borsboom v Preet PVT Limited*<sup>1</sup> 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.

[11] The Court in *Nicholson v Ford*<sup>2</sup> set out guidance about the inter-relationship between the guidance set out in *Preet*, s 133A of the Act and the other relevant factors to be taken into account when considering the imposition of penalties.

[12] Taking these factors into account after considering the parties' submissions, I find it appropriate to impose in all the circumstances of the case a penalty of \$2000 on Chambers Limited and a penalty of \$1000 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 \$2000 of the aggregated penalty amount to Ms Melbourne.

[14] Chambers Limited and Ms Chambers are severally and jointly liable to pay Ms Melbourne \$2000 for breaching the settlement within 14 days of the day of this determination. The balance of \$1000 must be paid by Chambers Limited and/or Ms Chambers to the Authority for subsequent transfer into a Crown bank account within 14 days.

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<sup>1</sup> [2016] NZEmpC 143

<sup>2</sup> [2018] NZEmpC 132

## Costs

[15] Costs are reserved. The parties are invited to resolve the matter between them. If they are unable to do so, Ms Melbourne has 28 days from the date of this determination in which to file and serve a memorandum on costs. Chambers Limited and Ms Chambers have a further 14 days in which to file and serve a memorandum in reply.

[16] Notwithstanding Ms Melbourne's early view that "indemnity" costs are warranted in the circumstances of the case, the parties could expect the Authority to determine costs, if asked to do so, on its usual "daily tariff" basis unless particular circumstances or factors require an adjustment upwards or downwards.<sup>3</sup>

Andrew Dallas  
Member of the Employment Relations Authority

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