

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2019] NZERA 229
3048912

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: 16 April 2019

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The parties entered into a Record of Settlement on 8 November 2018 which was signed by a mediator in accordance with the requirements of s 149 of the Employment Relations Act 2000 (the Act). Ms Turkington says the record of settlement (settlement), which was disclosed to the Authority for purposes of enforcement, has been breached. She seeks a compliance order and penalties.

The Authority's investigation

[2] Ms Turkington's employment relationship problem was investigated, with the agreement of the parties, "on the papers" under s 174D of the Employment Relations Act 2000 (the Act).

[3] 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. I record I have, however, fully considered this material.

Issues

[4] The issues that arose for determination during the Authority's investigation are:

- (i) Should a compliance order issue requiring Chambers Limited and Tracey Chambers to transfer Ms Turkington's mobile phone number in accordance with cl 5 of the settlement;
- (ii) Should penalties be imposed on Chambers Limited and Ms Chambers for breach of the settlement, if so in what amount and should any of it be made payable to Ms Turkington; and
- (iii) Should either party contribute to the cost of representation of the other party?

What happened?

[5] The settlement is binding upon Janine Turkington, Chambers Public Relations Limited (Chambers Limited) and Ms Chambers personally as director of Chambers Public Relations Limited.

[6] The settlement contains a series of obligations upon the parties. One of the obligations upon Chambers Limited and Ms Chambers was to pay Ms Turkington a sum of money within 14 days of the execution of the settlement. Ms Turkington said this did not occur. She said the money was paid in two tranches, with the second tranche being paid outside the 14 day period. Chambers Limited and Tracey Chambers did not, and, indeed, on the facts, could not dispute this.

[7] Additionally, cl 5 of the settlement required Chambers Limited and Tracey Chambers to transfer a former personal mobile phone back into Ms Turkington's name. This did not happen within what would be, objectively, regarded as the "reasonably practicable" timeframe specified and, indeed, is still yet to occur. Again, Chambers Limited and Tracey Chambers did not, and, indeed, on the facts, could not dispute this.

[8] For completeness, Ms Turkington made several attempts to have the breaches of the settlement remedied before taking the step of lodging proceedings in the Authority.

The Authority's view

Compliance order

[9] It is appropriate to make a compliance order in the circumstances. Chambers Limited and Ms Chambers have not complied with cl 5 of settlement to transfer Ms Turkington's mobile phone number and no credible justification or excuse has been forthcoming as to why this is the case.

[10] Consequently, Chambers Limited and Ms Chambers must comply with cl 5 of the settlement within 14 days of the date of this determination. For the avoidance of all doubt, the relevant mobile phone number and service provider are recorded in the Authority's file. While a shorter time of three days was sought by Ms Turkington, this was not a realistic timeframe given the potential consequences of breaching the compliance order. Further, the period of 14 days now specified provides sufficient time to organise an orderly transfer of Ms Turkington's phone number having regard to upcoming public holidays: Good Friday, Easter Monday and ANZAC Day.

[11] Failure by Chambers Limited and Ms Chambers to comply with the compliance order may result in Ms Turkington applying to the Employment Court to exercise its powers under s 140(6) of the Act. Remedies can include an order that the person in default be sentenced to imprisonment for a term not exceeding three months and/or a fine not exceeding \$40,000.

Ms Turkington's claim for penalties

[12] The maximum penalty that can be imposed on Chambers Limited as a limited liability company for breaching the settlement is \$20,000. As Ms Chambers is named personally in the settlement, the maximum penalty that can be imposed on Ms Chambers as an individual is \$10,000. However, as was correctly observed by Ms Turkington, Chambers Limited and Ms Chambers are jointly and severally liable under the settlement for any breaches. Ms Turkington said Chambers Limited and Ms Chambers should both pay penalties and identified a number of “aggravating” features in aid of her claim.

[13] The Court in *Nicholson v Ford*¹ set out guidance about the inter-relationship between *Borsboom v Preet PVT Limited*², s 133A of the Act and the other relevant factors to be taken into account when considering the imposition of penalties. Two key “aggravating” features in this case are: (i) the ongoing breach of cl 5 of the settlement and (2) that Chambers Limited and Ms Chambers having previously been found to have engaged in similar conduct.³

[14] Taking all the above factors into account after considering the parties’ submissions, I find it appropriate to impose a penalty of \$3500 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.

[15] As Chambers Limited and Ms Chambers did not oppose the payment of this penalty, or any part thereof, to Ms Turkington, 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 \$3500 of the penalty to Ms Turkington.

[16] Chambers Limited and Ms Chambers are severally and joint liable to pay Ms Turkington \$3500 for breaching the settlement within 14 days of the day of this determination. The balance of the penalty of \$1500 must be paid by Chambers Limited and Ms Chambers to the Authority for subsequent transfer into a Crown bank account within 14 days.

¹ [2018] NZEmpC 132

² [2016] NZEmpC 143

³ See, *Melbourne v Chambers Public Relations Limited* [2019] NZERA 223

Costs

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

[18] The parties are advised they can 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.⁴

Andrew Dallas
Member of the Employment Relations Authority

⁴ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135.