IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

[2020] NZERA 295
3072192

	BETWEEN	CHRISTINE CROSSEN Applicant
	AND	YANG HOUSE LIMITED First Respondent
	AND	CONNIE YANG Second Respondent
Member of Authority:	Geoff O'Sullivan	
Representatives:	James Hobcraft, advocate for the Applicant Paul Brown, advocate for the Respondent	
Investigation Meeting:	11 March 2020 at Christchurch	
Submissions [and further Information] Received:	19 March 2020 from the Respondent 26 March 2020 from the Respondent 18 June 2020 by conference call	
Date of Determination:	30 July 2020	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Christine Crossen, states she worked for both the first respondent, Yang House Limited (Yang House) and the second respondent, Connie Yang, from late 2015 until January 2018. She had argued that she been grossly underpaid for work she completed, in breach of s 6 of the Minimum Wage Act 1983. On 16 January 2018 Ms Crossen's then representative, Sacked Kiwi, wrote to Yang House and Ms Yang setting out claims for holidays, statutory holidays, taxation issues, KiwiSaver issues, unlawful surveillance, unjustified disadvantage and unjustified dismissal. The evidence of Yang House was that there

was considerable negotiation between Sacked Kiwi and Yang House over the claims and prior to 14 March 2018 the terms of agreement ultimately reached were redrafted at the instigation of Yang House Limited and accepted by Ms Crossen's then representative as accurately reflecting the parties' positions.

[2] On 14 March 2018 Ms Crossen signed a record of settlement (ROS) under s 149 of the Employment Relations Act 2000 (the Act). Yang House signed the ROS on 23 March 2018 and a mediator from MBIE signed the ROS on 28 March 2018.

[3] Essentially, Ms Crossen now claims that the ROS settled only her personal grievance and that she was not forgoing minimum entitlements (e.g. money or leave entitlements which may be due under the Minimum Wage Act 1983 or the Holidays Act 2003) or the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016 as specified in s 148A(3) of the Act. She had asked for wage and time records from Yang House, but had not received them at the time of the investigation meeting. She says she is still entitled, notwithstanding the ROS, to bring her claim.

The issues

[4] The issues requiring investigation and determination are:

(a) Does the s 149 ROS purport to be in full and final settlement of all matters or does it only settle the personal grievances?

(b) Does the s 149 ROS prevent the applicant from bringing her wage claim?

(c) Did the respondents fail to provide wage and time records and, if so, should there be a penalty imposed?

Discussion

[5] Ms Crossen says that the ROS expressly excluded any settlement in respect of wages, holiday pay or minimum entitlement. In that regard she relies on paragraph 5 of the ROS which provides:

> In reaching this agreement the parties confirm they have not agreed to forego minimum entitlements (e.g. money or leave entitlements under the Minimum Wage Act 1983 or the Holidays Act 2003, or the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016 as specified in section 148A(3) of the Employment Relations Act 2000).

[6] The signed ROS is problematic for Ms Crossen's claim. Paragraph 10 provides:

> Both parties acknowledge that they have had the opportunity to seek legal advice in consideration of the termination of the employment relationship, and as to the terms of this record of settlement. This record of settlement is a full and final settlement of all matters between the applicant and the respondent arising out of their employment relationship.

[7] The ROS further provides:

> We confirm that we fully understand that once the mediator signs the agreed terms of settlement … except for enforcement purposes, neither of us may seek to bring these terms between the Employment Relations Authority or court whether by action, appeal and application for review or otherwise …

[8] Ms Crossen initially used the firm "Sacked Kiwi" to advance her claims which included her personal grievances. Her evidence before the Authority, was that her contact with Sacked Kiwi was arranged by her cousin. Further, she states she was in debt at the time and had no income. She says she spoke to no-one from Sacked Kiwi but ultimately received the ROS which she didn't read but signed after discussions with her cousin. She states that she was under the impression from Sacked Kiwi that she was only settling her personal grievance claim for hurt and humiliation but couldn't explain the basis on which she believed this. She says it was not her intention to forego any claim in respect of the other matters outlined in the 16 January 2018 letter from Sacked Kiwi to Yang House.

[9] During cross-examination, Ms Crossen explained that although she believed she had only wanted to settle her personal grievances, she did not explain that fact to Sacked Kiwi, her representative, or to her cousin, or to her friend, when they advised her regarding the signing of the ROS. When the full and final settlement nature of the ROS was put to her, Ms Crossen said that had she noticed it, she would not have included that provision.

[10] Yang House says that when the company signed the ROS, it was doing so in the belief all matters were being settled. The evidence before the Authority strongly indicates that was the case. The to-ing and fro-ing between representatives before the agreed settlement was produced in final form included discussions about settling everything and the proposed settlement contemplated resolution of all matters in dispute. Following that, the ROS was sent to the parties for signature and following that, each party was telephoned by a mediator from MBIE who certified:

> Before I signed the agreed terms of settlement I explained to the parties the effect of sections 148A, 149(1) and (3). I am satisfied that the parties

> understood the effect of sections 148A, 149(1) and (3), they have advised me that no minimum entitlements have been foregone in the reaching of this settlement and have affirmed their request that I should sign the agreed terms of settlement.

There is no doubt the ROS purports to settle all matters between the parties, including any holiday or wage claims. Ms Crossen has not argued that the mediator has somehow failed in his obligations under the Act.

Conclusion

[11] As permitted by s 174E of the Act, this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

[12] Section 149(3) of the Act impacts on a party's ability to revisit a settlement agreement. It provides:

> Where, following the affirmation referred to in subsection (2) of a request made under subsection (1), the agreed terms of settlement to which the request relates are signed by the person empowered to do so,—
>
> (a) those terms are final and binding on, and enforceable by, the parties; and
>
> (ab) the terms may not be cancelled under sections 36 to 40 of the Contract and Commercial Law Act 2017; and
>
> (b) except for enforcement purposes, no party may seek to bring those terms before the Authority or the court, whether by action, appeal, application for review, or otherwise.

[13] As Chief Judge Ingles noted in *David Lumsden v Sky City Management Limited*[1]

> The underlying policy intention is plain, namely to facilitate the full and final settlement of employment relationship issues at an early stage via a mediated process. That reflects the broader legislative scheme, which actively encourages parties to resolve such issues between themselves and without the intervention of the Authority and Court.

[14] It is clear from Sacked Kiwi's letter of 16 January 2018, that the issues the parties were negotiating over included whether or not any payments were due to Ms Crossen. They were being claimed on her behalf by Sacked Kiwi and accordingly were, as already discussed, front of mind in the settlement negotiations. There is no indication in the ROS that the intention was to settle only some matters and not others. The ROS clearly settles all matters between the parties arising out of the employment relationship. Judge Smith noted in *Ashish Maharaj v*

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1 [2017] NZEmpC 30

Wesley Wellington Mission Incorporated that the parties can settle claims for arrears of wages where they are in dispute.[2]

[15] In this case, the ROS was designed to be comprehensive, ensuring that all disputes between the parties were resolved. Both parties should have been aware of precisely what was being settled by the ROS, especially bearing in mind the nature of the claims initially brought on Ms Crossen's behalf. I am satisfied that the ROS signed by the parties in 2018, brought to an end Ms Crossen's claim for arrears of wages and holiday pay arising from her employment as well as settling any personal grievances. It follows therefore that the ROS signed by the parties bars Ms Crossen from proceeding with her current claim in the Authority.

[16] Ms Crossen also brought a claim for penalties in respect of Yang House's failure to provide wage and time records. I decline to award a penalty on this occasion because although Yang House failed to provide wage and time records as requested by Christine in her attempt to bring her further claim, understandably, Yang House took the view that as it had settled all matters under the ROS in March 2018, there was no need for it to provide any further records. It is noted that when the Authority pointed out to Yang House that the obligation to produce the records remained, Yang House did produce them. For the sake of completeness, I note the late production of the records made no difference to the matters before the Authority, because all claims against Yang House were settled by the ROS.

Costs

[17] Costs are reserved.

Geoff O'Sullivan
Member of the Employment Relations Authority

[2] [2016] NZEmpC 129