

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2021] NZERA 249  
3135620

BETWEEN                      HARDIK GEDIYA  
Applicant

AND                              SHARDA TRANSPORT  
LIMITED  
First Respondent

AND                              KARAN SHARDA  
Second Respondent

Member of Authority:      Robin Arthur

Representatives:            Alexander Brown, advocate for the Applicant  
Karan Sharda, director of First Respondent and in  
person as Second Respondent

Date:                              11 June 2021

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**DETERMINATION OF THE AUTHORITY**

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[1]      Hardik Gediya applied to the Authority for orders requiring Sharda Transport Limited (STL) and Karan Sharda to comply with the terms of a settlement agreement certified by an employment mediator under s 149 of the Employment Relations Act 2000 in April 2020. Certification has the effect that the agreement is final, binding, enforceable and cannot be brought before the Authority except for enforcement purposes.

[2]      Mr Gediya also sought an order for reimbursement of his costs and expenses for bringing the compliance application and an order imposing a penalty on STL and Mr Sharda for breaching their agreement.

[3]      Although the terms of their settlement agreement were agreed to be confidential it is necessary for enforcement purposes in this determination to disclose that the parties

had agreed STL and Mr Sharda would pay monthly instalments over a 12 month period of certain amounts to Mr Gediya and, for representation costs, to his representative.

[4] The agreement defined both STL and Mr Sharda as “the employer” so both the company and him were jointly and severally liable to make those instalment payments. They paid eight of the agreed instalments but did not pay the last four instalments due in the months of January, February, March and April 2021. The total amounts outstanding are \$5,324.00 due to Mr Gediya and \$1,341.64 due to his representative.

[5] Mr Sharda lodged a statement in reply saying he had not paid the remaining instalments because his business had lost contracts and he had personal health difficulties.

### **The Authority’s investigation**

[6] A telephone conference was scheduled on 31 May 2021 to discuss how to deal with Mr Gediya’s application. Mr Sharda had confirmed by email on 21 May that he would attend the call but at the scheduled time could not be contacted on either of two mobile telephone numbers for him on the Authority records.

[7] In the brief call that proceeded in Mr Sharda’s absence I adjourned the matter for seven days to allow him and STL an opportunity to arrange to pay the outstanding amount and also arranged for Mr Gediya’s representative to advise the Authority if the money was not paid at the completion of that period.<sup>1</sup>

[8] A Minute was sent to both parties that day confirming the seven day adjournment and advising that, if no payment was made by the end of that period, a determination would be issued without any further delay addressing the applications for compliance, costs, reimbursement of the Authority fee and a penalty for breach of the terms of settlement.

[9] On 8 June Mr Gediya’s representative advised the Authority that the outstanding sums had not been paid. His message was copied to the email address at which the Authority has previously communicated successfully with Mr Sharda as recently as 21 May. Mr Sharda had not contacted the Authority meanwhile or has not responded to or contradicted the 8 June message.

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<sup>1</sup> Employment Relations Act 2000, s 173(2).

### **Compliance order**

[10] Although Mr Sharda advised that he and the company had some financial difficulties he has not provided any evidence that the amounts due could not be paid by raising funds by way of a loan from a financial institution, friends or family or by sale of company or personal assets.

[11] Under s 137(1)(a)(iii) and s 151 of the Act STL and Mr Sharda are ordered to comply with the terms of their settlement agreement by paying \$5,324.00 to Mr Gediya and \$1,341.64 to Mr Gediya's representative within 14 days of the date of this determination.

### **Costs and reimbursement of Authority fee**

[12] Mr Gediya has incurred further costs of representation in seeking compliance with the terms of the certified settlement agreement. STL and Mr Sharda must now contribute to those additional representation costs. STL and Mr Sharda must pay the sum of \$1,000 as costs to Mr Gediya. They must also reimburse him \$71.56 for the fee paid to lodge his application in the Authority. They are jointly and severally liable for both sums which must be paid within 14 days of the date of this determination.

### **Penalty for breach of a term of a certified settlement agreement**

[13] Under s 149(4) of the Act a person who breaches an agreed term of a certified settlement agreement is liable to a penalty imposed by the Authority.

[14] Settlement agreements made and certified under s 149 of the Act are the main formal instrument of dispute resolution for employment relationship problems in New Zealand. Typically more than 10,000 such agreements are certified each year by Ministry of Business employment mediators. Their strength and value to all parties lies in the statutory declaration of their finality and enforceability. Once agreed all parties know that, when the requirements of the terms are met, they are free to get on with their lives and business without the worry of ongoing litigation and dispute on whatever issues were agreed in their settlement.

[15] Parliament reinforced the finality and certainty of those agreements by providing for a penalty when a term is breached. This solemn sanction upholds the integrity of each individual agreement and deters parties, whether they be an employer

or a worker, from breaking their promise. It is an instance of the law saying promises are made to be kept and, for public policy reasons, there is a price for breaking such promises.

[16] Accordingly, it is appropriate to impose a penalty on STL and Mr Sharda for breaching the term for payment of agreed instalments. Given the nature of the breach and its ongoing nature, and weighing the factors set in s 133A of the Act for determining a penalty and the range of penalties in similar cases, an appropriate penalty for this breach is \$2,000. STL and Mr Sharda are jointly and severally liable for this amount. It must be paid to the Authority within 28 days of the date of this determination.<sup>2</sup> On recovery of the penalty, the Authority must transfer that amount to a Crown Bank Account.<sup>3</sup>

### **Summary of orders**

[17] Within 14 days of the date of this determination STL and Mr Sharda must pay the following sums to Mr Gediya:

- (a) \$5,324.00 due under the certified settlement agreement; and
- (b) \$1,071.56 as costs of representation and reimbursement of the Authority fee.

[18] Within 14 days of the date of this determination STL and Mr Sharda must pay Mr Gediya's representative the sum of \$1,341.64.

[19] Within 28 days of the date of this determination STL and Mr Sharda must pay to the Authority \$2,000 as a penalty for breach of a certified settlement agreement.

Robin Arthur  
Member of the Employment Relations Authority

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<sup>2</sup> Employment Relations Act 2000, s 149(4) and s 135.

<sup>3</sup> Employment Relations Act 2000, s 136.