

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2021] NZERA 327  
3137080

BETWEEN

PAUL ARONA  
Applicant

A N D

DARRYN MACDONALD,  
DIRECTOR ON BEHALF OF  
STEVRYN HOLDINGS LIMITED  
Respondent

Member of Authority: Peter van Keulen

Representatives: Applicant in person  
Respondent in person

Investigation Meeting: 27 July 2021

Date of Determination: 27 July 2021

---

**DETERMINATION OF THE AUTHORITY**

---

**This determination is a written record of an oral determination delivered on 27 July 2021.**

**Employment relationship problem**

[1] The applicant and the respondent are parties to a record of settlement dated 22 March 2021. A mediator from the Mediation Services of the Ministry of Business Innovation and Employment signed the record of settlement, pursuant to s 149 of the Employment Relations Act 2000 (the “Act”).

[2] The statement of problem, lodged in the Authority, alleges that the respondent has not complied with clause 2 of the record of settlement as he has not paid an agreed lump sum payment by the prescribed deadline, being 14 days from 22 March 2021.

[3] The applicant seeks a compliance order, a penalty and costs for the breach by the respondent.

**Facts giving rise to this claim**

[4] The applicant had an employment relationship problem which he resolved with his employer. The parties reached an agreement in full and final settlement, which was recorded in the record of settlement.

[5] Clause 2 of the record of settlement provides that the employer, Darryn MacDonald, Director on behalf of Stevryn Holdings Ltd was to pay the employee, Paul Arona, \$11,000.00 pursuant to s 123(1)(c) of the Act within 14 days of 22 March 2021.

[6] The applicant has not been paid any of the money due under clause 2 of the record of settlement.

**Has the respondent breached the record of settlement?**

[7] The respondent has breached the record of settlement by not making the payment set out in clause 2.

**Is it appropriate to make a compliance order?**

[8] As the respondent has breached the record of settlement a compliance order is necessary. I will make an order for compliance pursuant to s 137(2) of the Act.

[9] The respondent must comply with clause 2 of the record of settlement by paying Mr Arona \$11,000.00 within five business days of the date of this determination.

**Should I impose a penalty against the respondent?**

[10] Given the respondent's breach of the record of settlement it is appropriate to impose a penalty against it.

[11] Mr MacDonald's only explanation for not paying the amount due under the record of settlement is simply that neither he nor Stevryn Holdings Ltd has money to pay.

[12] In determining the amount of the penalty I have considered s 133A of the Act, including in this assessment Mr MacDonald's limited explanation. And I have considered the range of penalties awarded in similar cases.

[13] Based on this I assess the appropriate penalty to be \$1,000.00. I also conclude that this penalty should be paid to the applicant in order to compensate him for some of the inconvenience, distress and cost he has suffered or incurred as a result of the respondent's breach of the record of settlement.

### **Costs**

[14] The respondent must also pay \$71.56 for the filing fee on the statement of problem.

### **Orders**

[15] Darryn MacDonald, Director on behalf of Stevryn Holdings Ltd has breached the record of settlement as it failed to make the payment set out at clause 2.

[16] Darryn MacDonald, Director on behalf of Stevryn Holdings Ltd must comply with clause 2 of the record of settlement by paying \$11,000.00 to Paul Arona within five business days of the date of this determination.

[17] I impose a penalty of \$1,000.00 against Darryn MacDonald, Director on behalf of Stevryn Holdings Ltd and order that this amount be paid directly to Paul Arona within 14 days of the date of this determination.

[18] Darryn MacDonald, Director on behalf of Stevryn Holdings Ltd must pay Paul Arona \$71.56 for the filing fee in this matter and that must also be paid within 14 days of the date of this determination.

Peter van Keulen  
Member of the Employment Relations Authority