

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 448
3141521

BETWEEN

JOHN BARKER
Applicant

AND

SJ MOWING SERVICE &
PROPERTY MAINTENANCE
LIMITED
Respondent

Member of Authority: Leon Robinson
Representatives: Applicant in person
Joseph Sionetuato for the Respondent
Investigation Meeting: 23 September 2021 by video conference call
Determination: 12 October 2021

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] John Barker (Mr Barker) asks the Authority to enforce a record of settlement he and his former employer SJ Mowing Service & Property Maintenance Limited (SJ Mowing) negotiated when their employment relationship ended in March earlier this year.

The Authority's investigation

[2] SJ Mowing failed to lodge a statement in reply responding to Mr Barker's application within the time permitted for it to do so. It failed to take any other steps and so the matter was scheduled for Investigation Meeting. SJ Mowing was notified of the scheduled Investigation Meeting and informed that it required the Authority's leave to respond.

[3] The Investigation Meeting proceeded by way of video conference call and SJ Mowing attended through its director and shareholder Mr Joseph Sionetuato (Mr Sionetuato). It sought leave to defend Mr Barker's application. Mr Barker opposed the granting of leave telling me he had followed the rules and SJ Mowing had had sufficient time to do what was required of it. Mr Sionetuato explained that SJ Mowing had every intention of taking steps to defend the application but its business operations had distracted it from doing so.

[4] I explained to the parties that records of settlement served a very important purpose in bringing finality to employment relationship problems. The institutions faithfully enforce them to underscore the desirability of parties resolving problems informally themselves and to reduce the need for contested hearings and the investment of public resources that involved. I emphasised to the parties that records of settlement that required investigation for enforcement undermined very important public policy considerations supporting them.

[5] As directed, Mr Barker lodged a comprehensive written witness statement outlining the problem from his perspective. He and Mr Sionetuato answered questions under affirmation.

[6] As permitted by s 174E of the Employment Relations Act 2000 (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.

The issues

[7] The issues requiring investigation and determination were:

- (a) Has there been an employment relationship problem resolved with terms of settlement signed by a person with a general authority for the purposes of section 149 of the Act?
- (b) Has there been non-observance or non-compliance with terms of settlement?
- (c) Should the Authority exercise its discretion, to by compliance order require, a person to do any specified thing for the purpose of preventing further non-observance or non-compliance with that provision or requirement (terms of settlement)?

(d) What timeframe should the Authority specify for the order to be obeyed?

Terms of settlement

[8] Mr Barker and SJ Mowing resolved an employment relationship problem between them under agreed terms settlement which were recorded in a Record of Settlement signed by them and a mediator on 5 March 2021 (terms of settlement). The mediator signed the terms of settlement attesting she held a general authority for the purposes of section 149 of the Act.

[9] By law, the terms of settlement were final and binding, and enforceable by the parties and could not be cancelled.

Non-compliance?

[10] The terms of settlement obliged SJ Mowing to discharge an agreed total sum of \$2,784.70 payable to Mr Barker by making specified payments between 5 March 2021 and 24 April 2021 in accordance with an annexed payment plan.

[11] SJ Mowing did not make all of the specified payments. It made single payments on 5 March, 12 March and two payments on 19 March 2021 in the total sum of \$1,316.20. The amount outstanding still to be paid to Mr Barker is the sum of \$1,468.50.

[12] The final payment was due on 23 April 2021. SJ Mowing offered no explanation for its failure to meet the commitments it had made.

[13] The terms of settlement stipulated that upon any default in payment according to the payment plan, the remaining amount outstanding became due and payable immediately.

[14] I find that there was default and as from 12 March 2021 the total amount owing became immediately due and payable. SJ Mowing failed to comply with the terms of settlement.

Compliance order

[15] I am satisfied that it is appropriate to exercise my discretion to make an order requiring SJ Mowing to comply with the terms of settlement for the purposes of preventing further non-compliance.

[16] I order SJ Mowing Service & Property Maintenance Limited to comply with the Record of Settlement dated 5 March by paying to John Barker within 28 days of the date of this determination the sum of \$1,468.50 (One thousand four hundred and sixty-eight dollars and fifty cents) without deduction.

Timeframe for compliance

[17] I have specified that the compliance order I have made is to be obeyed within 28 days of the date of this determination.

Costs

[18] I further order that Mr Barker is to be reimbursed the lodgement fee on this application. I order SJ Mowing Service & Property Maintenance Limited to pay to John Barker within 28 days of the date of this determination the sum of \$71.56 (Seventy-one dollars and fifty-six cents) being reimbursement of the lodgement fee.

[19] I understand the parties have not incurred costs of professional representation and there will be no orders on costs.

Leon Robinson
Member of the Employment Relations Authority