

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 142
3118192

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| BETWEEN | CHARU MALIK Applicant |
| AND | IMMIGRATIONZ SERVICES LIMITED First Respondent |
| AND | INDERPAL SINGH Second Respondent |

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| Member of Authority: | Eleanor Robinson |
| Representatives: | Gregory Bennett, advocate for the Applicant No appearance by the Respondent |
| Investigation Meeting: | On the papers |
| Submissions and/or further evidence | 4 February 2021 from the Applicant |
| Determination: | 13 April 2021 |

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Ms Charu Singh, claims that the Respondent, Immigrationz Services Limited (ISL) failed to adhere to clause 3 of a mediated settlement agreement (the Record of Settlement).

[2] On 5 June 2010 the Record of Settlement was entered into under s 149 of the Employment Relations Act 2000 (the Act). The Record of Settlement was signed by the Applicant and by Mr Inderpal Singh, sole director and shareholder, on behalf of ISL. The Record of Settlement was also counter-signed by a Mediator employed by the Ministry of Business, Innovation and Employment (MBIE).

[3] Under clause 3 of the Record of Settlement Ms Charu Singh was to be paid a total sum of \$6,000,00 pursuant to s 123(1)(c)(i) of the Act.

[4] The Record of Settlement stated at clause 3:

ISL shall, without admission of liability, pay the employee the sum of \$6000.00 in terms of the provisions of s 123(1)(c)(i) of the Employment Relations Act 2000. This amount will be paid by way of direct credit to the employee's nominated bank account in three instalments as follows:

- i. \$2000.00 on 3 July 2020.
- ii. \$2000.00 on 7 August 2020.
- iii. \$2000.00 on 4 September 2020.

[5] The Record of Settlement was certified under s 149 of the Act by the Mediator. That certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms:

- a. were final, binding and enforceable; and
- b. could not be cancelled; and
- c. could not be brought before the Authority or the court for review or appeal, except for the purposes of enforcing those terms.

Note

[6] The parties agreed to the Authority determining this issue based on the Statement of Problem and the Statement in Reply, and submissions by the applicant.

Issues

[7] The issue for determination is whether or not ISL to comply with clause 3 of the Record of Settlement.

Background

[8] The payments set out in clause 3 of the Record of Settlement were to be paid to Ms Singh by the dates indicated.

[9] The first two payments were made in accordance with the Record of Settlement, however the third payment due to be made on 4 September 2020 was not paid. Mr Inderpal Singh was unable to be contacted by the applicant, so a statement of problem was prepared and filed with the Authority on 7 September 2020.

[10] The respondent made payment overnight on 7 September 2020 with the monies appearing in Ms Charu Singh bank account on the morning of 8 September 2020.

[11] Mr Inderpal Singh provided a bank statement to the Authority confirming the payment to Ms Singh had been made as stated and Ms Singh has confirmed payment of the amount due under clause 3 of the Record of Settlement.

Compliance Order

[12] The Record of Settlement refers in clause 3 to the date when the payment of the third instalment should be made. I find that the payment has been made, but not by the date as agreed by the parties and as set out in the Record of Settlement.

[13] From the evidence available to the Authority, I am satisfied that Immigrationz Services Limited and Inderpal Singh failed to comply with clause 3 of the Record of Settlement.

[14] **However as payment in full has now been received by Ms Charu Singh, I make no order for compliance.**

Penalty

[15] The Act includes provisions encouraging parties to resolve their employment relationship issues between themselves. The Record of Settlement represents such a resolution and therefore the failure by one party to honour the terms of any resulting agreement is a serious matter.

[16] Public confidence in s 149 settlements will be undermined if it is perceived that parties are permitted to breach these settlements with impunity. It is important that the parties can have confidence in the enforceability of the terms of agreed settlements.

[17] Having considered the principles which should govern the imposition of a penalty¹, I determine that a penalty of \$200.00 is appropriate in all the circumstances of this case given the intentional nature of the breach of a term of a Record of Settlement freely entered into by the parties.

[18] **I order that ISL is to pay a penalty of \$200.00, to be paid to Ms Charu Singh. Payment is to be made within 14 days of the date of this Determination.**

Filing Fee

[19] **ISL is also ordered to pay Ms Charu Singh the filing fee of \$71.56 within 14 days of the date of this Determination.**

¹ *Borsboom (Labour Inspector) v Preet PVT Ltd and Warrington Discount Tobacco Ltd* [2016] NZEmpC 143

Costs

[20] Ms Charu Singh has applied for costs.

[21] Costs are at the discretion of the Authority. The principles applicable to awards of costs in the Authority are well established. It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*² that costs are modest. Costs are also reasonable as observed by the Court of Appeal in *Victoria University of Wellington v Alton-Lee*³ at para [48] “As to quantification, the principle is one of reasonable contribution to costs actually and reasonably incurred.”

[22] The matter was considered on the papers with no investigation meeting taking place, and I take this into consideration in assessing costs.

[23] **Accordingly, ISL is ordered to pay to Ms Charu Singh the sum of \$750.00 as a contribution towards costs within 14 days of the date of this Determination.**

Eleanor Robinson
Member of the Employment Relations Authority

² [2005] 1 ERNZ 808

³ [2001] ERNZ 305