

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 24
3131301

BETWEEN	JASON TRIGG Applicant
AND	NEW WORLD INVESTMENTS LIMITED First Respondent
AND	COASTWEST HOLDINGS LIMITED Second Respondent

Member of Authority:	Claire English
Representatives:	Jason Trigg, applicant in person Shawn Rayson, for the First Respondent Graeme Bratty, for the Second Respondent
Investigation Meeting:	2 November and 6 December 2021
Determination:	31 January 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Mr Trigg, raises two money claims against the first respondent; first for pay for one day's work which he says remains unpaid; and second, for unpaid holiday pay. In addition, Mr Trigg claims that the first respondent failed to provide him with wages and time records on request, and breached a record of settlement signed between himself and the first respondent (this breach resulting in his claim for pay for one day's unpaid work).

[2] Mr Trigg raises a claim for unpaid holiday pay against the second respondent in the alternative.

[3] The first respondent was represented by its Chief Executive Officer, Mr Shawn Rayson. Mr Rayson responds by saying that Mr Trigg was not authorised to work on the day in question, which was prior to the signing of his employment agreement with the first respondent, and in any case, this claim has been effectively met by the signing of a binding Record of Settlement between the parties, which was paid properly in accordance with its terms and cannot now be revisited. In regards to the holiday pay claim, Mr Rayson advises that this holiday pay was not earned by Mr Trigg during his employment with the first respondent, but relates to Mr Trigg's previous employment with the second respondent.

[4] The second respondent was represented by its Director, Mr Graeme Bratty. Mr Bratty says that no holiday pay is owed to Mr Trigg, as all matters between Mr Trigg and the second respondent have been resolved by a binding Record of Settlement between Mr Trigg and the second respondent, and all payments due under that agreement have been paid properly, with nothing remaining outstanding.

The Authority's investigation

[5] For the Authority's investigation, a written witness statement was lodged from Mr Trigg, and verbal statements were provided by Mr Rayson and Mr Bratty. All parties answered questions under affirmation from me and gave oral closing submissions.

[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) As against the first respondent, claims for:
- i. Payment for 1 day's work on 17 September 2019;
 - ii. Payment for holiday pay arising from Mr Trigg's employment with his previous employer, the second respondent;
 - iii. A penalty for the first respondent's failure to provide wages and time records when requested by Mr Trigg;
 - iv. A penalty arising from the first respondent's breach of a settlement agreement by way of failing to pay Mr Trigg for 1 day's work on 17 September 2019.
- (b) As against the second respondent in the alternative, claims for:
- i. Payment for holiday pay arising from Mr Trigg's employment with the second respondent.

Background

[8] Mr Trigg was employed by the second respondent (Coastwest) for some years. In 2019, its director, Mr Bratty, decided to sell the business to the first respondent (NWI).

[9] As part of the negotiations for this sale, there were some discussions about whether NWI would take over the employment of Coastwest employees.

[10] It was initially suggested that Mr Trigg's employment would be transferred to NWI. In accordance with this proposal, Mr Bratty explained to Mr Trigg in emails that NWI would be responsible for the holiday pay that Mr Trigg had accumulated while employed by Coastwest. There were multiple emails from Mr Bratty to Mr Trigg assuring Mr Trigg that NWI would be responsible for Mr Trigg's holiday pay.

[11] The sale process took longer than expected, and Mr Trigg went on leave for approximately 6 weeks starting at the end of July and ending at the end of August.

[12] In the end, NWI did not take over Mr Trigg's employment. At the end of August 2019, Mr Trigg's employment with Coastwest came to an end. Neither Mr Trigg nor Mr Bratty were able to put a firm date on Mr Trigg's last day of employment as he had spent some time on leave leading up to this, and there was at that time a number of disputes between the parties.

[13] In September 2019, Mr Bratty and Mr Trigg entered into a Record of Settlement in accordance with section 149 of the Act, in full and final settlement (the Coastwest settlement). The Coastwest settlement records that Mr Trigg's employment with Coastwest ended on 31 August 2019.

[14] Mr Trigg then entered into negotiations with Mr Rayson and NWI, and commenced employment with NWI on either 17 September or 18 September 2019. There is a dispute about the correct day, and payment for that day.

[15] Although Mr Trigg was employed by NWI from at the latest, 18 September 2019 onwards, he initially received 3 payslips in the name of "Westcoast Brewery"¹, which also stated at the foot of the page: "*Prepared using MYOB Payroll licenced to: COASTWEST HOLDINGS LTD – Page 1*" followed by a date and time stamp. These three payslips showed Mr Trigg's accrued annual leave as it had been when his employment with Coastwest had ended, in the initial sum of \$5,781.94 and increasing over time to \$6,793.45. Shortly thereafter, the payslips changed format, to show the name of NWI, and the annual leave amount was no longer shown.

[16] Mr Trigg's employment with NWI came to an end on or about 18 October 2019. This is recorded in a separate Record of Settlement between Mr Trigg and NWI in accordance with section 149 of the Act, in full and final settlement (the NWI settlement).

[17] Mr Trigg now seeks payment of his annual holiday pay relating to his employment with Coastwest, in the sum of \$6,793.45, as well as payment for 1 day's work on 17 September 2019

¹ NWI's trading name.

from NWI, and associated claims against NWI for failure to provide wages and time records, and breach of the NWI settlement.

[18] Both NWI and Coastwest say that the settlement agreements they have entered into with Mr Trigg resolve all his claims, and those agreements have been performed according to their terms.

Claims against NWI

[19] Mr Trigg states that in September 2019, he was in discussions with Mr Rayson about signing a new employment agreement with NWI.

[20] He was waiting to receive an employment agreement from Mr Rayson following phone discussions. He received an offer of employment and an employment agreement from Mr Rayson by email on the night of Monday 16 September.

[21] On the strength of this he went into work on Tuesday 17 September. Mr Rayson was at that time in transit from Canada to New Zealand.

[22] Mr Trigg spent the day working, including planning for future demand, placing orders for supplies, talking with contractors, and the like. He spoke with a colleague, but did not formally “report in” to anyone.

[23] He stated that Mr Rayson had authorised him to work on that day, and was expecting him to work.

[24] On the following day, which was Wednesday 18 September, he again went to work, picked up the work truck, and drove over Lewis Pass to Christchurch, to pick up some work supplies, and to meet Mr Rayson at the airport. He stayed overnight near Christchurch airport, and picked up Mr Rayson, who flew in the following day. Mr Trigg and Mr Rayson drove back to the West Coast on Thursday 19 September 2019.

[25] Mr Rayson recalls that Mr Trigg brought with him the employment agreement that Mr Rayson had emailed him on Monday night, and asked Mr Rayson to sign it almost immediately, at the airport. However, Mr Rayson declined to do so.

[26] The agreement was signed by both parties later that day, the 19th of September, after they had had an opportunity to discuss it.

[27] There was no dispute between the parties that Mr Trigg was authorised to come to Christchurch using the work vehicle on 18 September 2019, and stay overnight, returning on 19 September 2019 with Mr Rayson, and worked from then onwards. The 18th and 19th of September were days that were worked and paid for.

[28] The only dispute is whether Mr Trigg was properly working for NWI on 17 September 2019, after he had received an employment agreement by email, but before it was signed, and if so, is his claim for payment for this day precluded by the NWI settlement?

Findings re NWI

[29] The employment agreement between Mr Trigg and NWI has a commencement date set out in Schedule A, which is stated to be "*15 September 2019*". This date has been crossed out by hand, and the date "*September 19/2019*" is written next to it and signed by Mr Rayson. Both Mr Trigg and Mr Rayson have initialled the relevant page.

[30] The agreement itself was signed by both Mr Trigg and Mr Rayson on 19 September 2019.

[31] Mr Rayson explained that from his perspective, he needed to discuss and agree with his board of directors what offer the company was going to make to Mr Trigg. This took some time, and although Mr Rayson had initially suggested a start date of 15 September 2019, he was only able to put a firm offer of employment to Mr Trigg by email on 16 September 2019, immediately after which Mr Rayson was in transit to New Zealand.

[32] Mr Rayson says that it was not until he had had the opportunity to discuss matters with Mr Trigg on 19 September 2019 that he was happy to sign the employment agreement, and then he and Mr Trigg both signed the document.

[33] Mr Trigg became aware that he had not been paid for the day of 17 September 2019, and raised this with Mr Rayson by email on 25 September 2019, and again with another director of NWI by email on 1 October 2019. Mr Trigg raised the issue of payment for 17 September 2019 with Mr Rayson again, by email on 2 October 2019, and referred to a previous verbal statement from Mr Rayson, that Mr Trigg's start date would be 15 September 2019.

[34] This was raised in the context of other more fundamental disagreements between the parties about Mr Trigg's overall rate of pay and role with NWI, that are not relevant to this determination.

[35] Both parties sought legal advice. As part of correspondence between the parties' legal advisors, Mr Trigg's lawyer requested wage and time records, on 15 October 2019. On 17 October 2019, NWI's accountant provided copies of payslips showing dates of work, hours worked per week, and applicable pay rates, along with further information as to how payments had been calculated. NWI's lawyer advised that wage and time records were being collated.

[36] The parties then attended mediation. The parties signed the NWI settlement, dated 24 October 2019. The relevant terms of the NWI settlement state that:

Without any admission of liability, the parties have now agreed to settle all matters between them arising out of their employment relationship, and they wish to record the terms of their agreement in this settlement agreement.

[37] The NWI settlement goes on to provide for various payments, relevantly:

The employee shall be paid wages and holiday pay down to the end of business on 18 October 2019 in the next pay cycle.

[38] It is common ground that this has occurred, and the only matter now in dispute is payment for one day, being 17 September 2019.

[39] I find that there was no firm agreement that Mr Trigg would work for NWI on 17 September 2019. This is in contrast to the specifically discussed and performed agreement that Mr Trigg would drive the work vehicle to Christchurch on 18 September and stay overnight, before picking Mr Rayson up at the airport and returning to the Westcoast the following day.

[40] In saying that there was an agreement that he would work and be paid for 17 September 2019, Mr Trigg relies on having been sent an employment agreement on 16 September, as well as a prior statement which he says was made to him by Mr Rayson to the effect that his (Mr Trigg's) first day of work would be 15 September 2019.

[41] Although it seems relatively clear that a start date of 15 September 2019 may have been the original plan, this was overtaken by events. Mr Trigg himself acknowledges that although he had discussed with Mr Rayson that his first day of work would be 15 September, he did not in fact commence work on 15 September because it was a Sunday in New Zealand, and he did not work on Monday 16 September either, because he was still waiting to receive an employment agreement.

[42] He then went to work on 17 September 2019, after he had received the employment agreement, but while Mr Rayson was traveling. There was no opportunity for the parties to conclude the employment agreement on 17 September 2019.

[43] The parties did not agree on the terms and conditions of employment until 19 September 2019. This is shown by the hand-written changes to the commencement date in the employment agreement itself, and the signatures of both Mr Trigg and Mr Rayson on 19 September 2019.

[44] The terms of employment that were agreed included that Mr Trigg would perform specific tasks on 18 and 19 September 2019, and would commence "full" employment (for want of a better term) from 19 September 2019 onwards. There was no agreement for him to work on 17 September 2019.

[45] Even if there had been an agreement between the parties for Mr Trigg to work and be paid for 17 September 2019, this claim has already been resolved by the NWI settlement agreement.

[46] The Court has found that it is appropriate to read the terms of a Record of Settlement under section 149 of the Act “*broadly*” and that there are good reasons to interpret such agreements in a way that brings a “*comprehensive resolution*” to disputes². Factors that the Court has taken into account in determining that a record of settlement was inclusive of all wage and holiday pay claims include:

- a. That the settlement agreement referred to resolving “all matters relating to an employment relationship problem” between the parties³;
- b. That the settlement agreement was expressed to be “in full and final settlement”⁴.
- c. That the agreement came about in circumstances where the employee had raised a number of different claims against the company, and had negotiated for a resolution as a whole⁵; and
- d. That the employee had been receiving advice during this process⁶.

[47] All of these factors equally apply in the present case. The NWI settlement states at Clause 3:

the parties have now agreed to settle all matters between them arising out of their employment relationship.

² *Crossen v Yangs House Limited* [2021] NZEmpC 102, at paragraph [33].

³ *Ibid*, at [27].

⁴ *Ibid*, at [29].

⁵ *Ibid*, at [32] and [33].

⁶ *Ibid*, see refernces at [21] and [30].

[48] The question of whether Mr Trigg was authorised to work for NWI on 17 September 2019 and whether it has an obligation to pay him is a matter arising out of their employment relationship.

[49] The NWI settlement further states at Clause 12 that:

this is the full and final settlement of all matters between New World Investments Limited and Jason Trigg arising out of their employment relationship.

[50] The phrase “full and final” and the repetition of the reference to “all matters” supports the idea that the parties intended the NWI settlement to encompass all matters in dispute between them.

[51] Mr Trigg had raised his claim for payment for work done on 17 September on multiple occasions in the 3 and a half weeks immediately before the settlement, and that claim had not been accepted by NWI. Both parties were aware that this was a matter in dispute between them when agreeing to resolve “all matters” that were between them. In addition, both parties were represented and were receiving legal advice at the time of signing, and the NWI settlement was countersigned by a mediator.

[52] When the NWI settlement was signed 24 October 2019, it did not include any agreement recognising 17 September as the start date of Mr Trigg’s employment, and there was no specific agreement to make payment in respect of this day. Despite this, Mr Trigg was at that time, willing to enter into the NWI agreement in full and final settlement.

[53] Accordingly, I find that The NWI settlement is in full and final settlement of all matters between the parties arising out of their employment relationship, which includes the dispute between the parties as to payment for 17 September 2019, which was “live” and unresolved at the time the NWI settlement was negotiated, agreed, and signed.

[54] Mr Trigg also raises a claim against NWI for payment of holiday pay arising from his previous employment with the second respondent company, Coastwest.

[55] There were various email discussions between Mr Trigg and Mr Bratty, about when and how Mr Trigg's holiday pay arising from his employment with Coastwest was going to be paid out to him. This included discussions about whether NWI would effectively "take over" Mr Trigg's holiday pay and assume liability for it in lieu of it being paid out to him. In the end, no agreement to this effect was ever reached. Mr Trigg was advised by email that NWI would not be taking over his employment with Coastwest. Mr Trigg ended his employment with Coastwest, took some time off⁷, entered into negotiations with NWI on his own behalf, and started new employment with NWI under a new employment agreement.

[56] There was no promise by NWI to pay Mr Trigg any amount for holiday pay resulting from his previous employment. Mr Trigg is unable to show any documentation to suggest that NWI took responsibility for his holiday pay resulting from his employment with Coastwest. In addition, Mr Trigg ended his employment with Coastwest, and did not immediately start work for NWI. He actively negotiated for new employment with NWI and signed a new employment agreement with NWI, which employment agreement does not mention any additional payment for holiday pay owing.

[57] It follows that any liability for holiday pay arising from Mr Trigg's employment with Coastwest remains the responsibility of Coastwest, as per sections 16 and 27 of the Holidays Act 2003. Each employer must provide paid annual holidays to an employee at the rate of not less than 4 weeks at the end of each completed 12 months of employment⁸. This means that an employer is liable to pay holiday pay calculated in relation to the duration of the employee's employment with that employer. There is no general liability arising from other employment an employee may have had with another employer, and absent express agreement (which did not occur here), no ability to reassign an employment agreement.

⁷ Note that the payroll records show that Mr Trigg was paid for his time off using a mix of sick leave and other entitlements. His claim for holiday pay is for entitlements remaining.

⁸ See section 16 of the Holidays Act 2003. If employment ends before 12 months service, this is to be calculated at the rate of 8% of gross earnings, see section 23 of the Holidays Act 2003.

[58] For the avoidance of doubt, there is no indication that NWI has failed to pay Mr Trigg the minimum entitlements it (as opposed to Coastwest) owed him under the Holidays Act 2003. Both Mr Trigg and Mr Rayson advised me at the Investigation Meeting that they understood NWI had paid what holiday pay entitlements Mr Trigg was due in relation to his tenure with NWI. Therefore, there is no indication that NWI has breached the NWI settlement between the parties by failing to make payment in accordance with the terms of that agreement, which required that Mr Trigg be paid wages and holiday pay down to the end of business on 18 October 2019 in the next pay cycle⁹.

[59] Mr Trigg also raises an allegation against NWI that it failed to provide wages and time records. The emails before the Authority show that there was a request for wages and time records, in email correspondence between the parties' lawyers. The emails show that, two days later, Mr Trigg was provided with payslips showing the hours of work each week, as well as the applicable pay rate. These payslips show that Mr Trigg was paid for 8 hours per day, Monday to Friday (which he advised the Authority were in fact his normal hours of work), and was paid starting from 18 September 2019, but was not paid from 17 September 2019.

[60] Together with the payslips and accompanying pay rate information, there was a general indication from the respondent's lawyer that wages and time records were being collated. No follow up correspondence to show what occurred next has been provided to the Authority.

[61] However, the documents do show that within a week of this information being provided, the parties had agreed to the NWI settlement already referred to. It is unclear what further information Mr Trigg required from NWI that was not provided at the time, and before the NWI settlement was signed.

[62] In these circumstances, and taking into account the information about wages paid and time worked that was contained in the payslips and accompanying email provided promptly to Mr Trigg, I am not prepared to conclude that there has been a breach of the statutory obligation

⁹ Set out at clause 5 of that agreement.

to provide wages and time records as set out in section 130 of the Employment Relations Act 2000.

Claims Against Coastwest

[63] Mr Trigg also brings a claim against the second respondent, Coastwest, in the alternative, for his holiday pay arising from his employment with Coastwest.

[64] Mr Trigg claims that, at the time his employment with Coastwest ended, he was owed some \$6,793.45 in unpaid holiday pay, which should have been paid out to him on the ending of his employment in accordance with section 27 of the Holidays Act 2003.

[65] Coastwest is represented by its director, Mr Bratty. Mr Bratty states Coastwest does not owe anything to Mr Trigg, as Coastwest and Mr Trigg entered into a Record of Settlement in accordance with section 149 of the Act, and that settlement resolved any and all issues arising from Mr Trigg's employment with Coastwest, including holiday pay.

[66] Mr Trigg acknowledges the Coastwest settlement. It is common ground that the terms of that settlement have been performed. However, Mr Trigg states that the Coastwest settlement excluded any payment for holiday pay.

[67] I have viewed the Coastwest settlement, with the consent of both parties. It is a settlement agreement in accordance with section 149 of the Employment Relations Act 2000. It has been signed by both Mr Trigg and Mr Bratty, and countersigned by a Mediator. The Coastwest settlement provides that:

- a. [Mr Trigg] has raised a personal grievance in respect of his terms and conditions of employment and subsequent redundancy. The parties agree to resolve the personal grievance and all matters in dispute between the parties as set out in this agreement. (Clause 2)

- b. a lump sum be paid by Coastwest to Mr Trigg, and that this is “in full and final settlement of all claims he [Mr Trigg] may have against Coastwest Holdings Ltd and Mr Bratty”. (Clause 4)
- c. In reaching this agreement, the parties confirm that they have not agreed to forego minimum entitlements (eg money or leave entitlements under the Minimum Wage Act 1983, or the Holidays Act 2003...). (Clause 5)
- d. Mr Bratty is named as a party to the Coastwest settlement as a Director/Guarantor, in addition to Coastwest Holdings Limited, which is party to the Coastwest settlement as the employer. Mr Bratty personally guarantees the payments to be made by Coastwest to Mr Trigg, and, together with Coastwest, indemnifies Mr Trigg against any tax liability that may arise from the course of his employment. (Clauses 6 and 7)

[68] Clause 4 of the Coastwest settlement provides for a relatively significant lump sum payment to Mr Trigg, under section 123(1)(c)(i) of the Act. It is some 4 times the amount of holiday pay Mr Trigg now seeks.

[69] There is no mention in the Coastwest settlement of specific sums in payment for wages, notice, holiday pay, or other specific contractual or minimum entitlements, rather, the parties have simply agreed on the payment of a lump sum in two parts. That lump sum is to be paid as compensation, and no tax is to be deducted, meaning that Mr Trigg has the benefit of receiving the entire amount “in hand”. There is no mention in the document that the settlement excludes or otherwise “carves out” holiday pay or any other specific entitlement. Instead, it appears that the Coastwest settlement was a “compromise” type settlement, whereby the parties agreed on an amount they thought appropriate to fairly bring to an end the employment relationship as whole.

[70] I also note that the Coastwest settlement was signed by both parties and was countersigned by a mediator, and Mr Trigg was receiving legal advice at the time the agreement was being negotiated.

[71] On its face, the Coastwest settlement is binding and encompasses any holiday pay entitlements, as by agreeing that minimum entitlements had not been forgone, Mr Trigg was accepting that when entering into this settlement, any holiday pay entitlements had been taken into account.

[72] In support of his claim that holiday pay was excluded from the Coastwest settlement, Mr Trigg points to the earlier email correspondence between himself and Mr Bratty leading up to the ending of his employment with Coastwest, where Mr Bratty indicated that Mr Trigg's employment would be taken over by NWI, including any outstanding holiday pay. Mr Trigg says that holiday pay was not part of the record of settlement with Coastwest, because he had understood it would be paid out separately.

[73] In addition, when Mr Trigg started work with NWI, and was being paid by NWI, he initially received 3 payslips headed "Westcoast Brewery" which also had Coastwest's name on them, and which showed his annual leave entitlement in full as it had been at the end of his employment with Coastwest. Mr Trigg explains that he was not surprised by this as he thought this was confirmation of what he had been told by Mr Bratty, that his annual leave would be recognised and paid by NWI.

[74] Mr Trigg is essentially inviting the Authority to look behind the Coastwest settlement in support of his claim, and to read additional terms into the Coastwest settlement that contradict the terms that are explicitly agreed in that document.

Findings re Coastwest

[75] At the Investigation Meeting, I put to Mr Bratty that the email correspondence showed that he had told Mr Trigg that Mr Trigg's holiday pay entitlements would be met by NWI. In addition, there were the payslips to which Mr Trigg referred showing his annual leave balance as it had been with Coastwest, even once he had commenced working for and being paid by NWI.

[76] I asked Mr Bratty what he had done to ensure that Mr Trigg knew and understood that the Coastwest settlement was to include holiday pay.

[77] Mr Bratty says that he spoke with Mr Trigg shortly before signing the Coastwest settlement, to tell him that settlement being negotiated would include all holiday pay entitlements. Mr Bratty also expressed the view that Mr Trigg was well aware of his rights, and was at the time actively and forcefully engaging with Coastwest to protect his position, including issuing a statutory demand against Coastwest and threatening to liquidate the company, in pursuit of monies that Mr Trigg believed were owed to him by Coastwest. In addition, Mr Trigg was receiving legal advice.

[78] Mr Bratty further explained that the payslips Mr Trigg received showing his accrued annual leave with Coastwest, after the commencement of his employment with NWI, was as a result of Coastwest agreeing with NWI to continue administering NWI payroll for a short time, and were not intended to accurately show Mr Trigg's entitlements, although he was unable to clearly indicate that he had ever explained this to Mr Trigg.

[79] Mr Trigg could not recall Mr Bratty explaining to him that the record of settlement was to include holiday pay entitlements, or any explanation that the payslips he received after starting work with NWI were inaccurate.

[80] Despite this, Mr Trigg faces a fundamental hurdle, in that the Coastwest settlement that he signed, states that he has agreed to resolve "*all matters in dispute between the parties*" in respect of the terms and conditions of his employment and subsequent redundancy with Coastwest.

[81] The Coastwest settlement provides for a relatively significant lump sum payment (well in excess of the annual leave payment that is now claimed) to Mr Trigg in "*full and final settlement*" of "*all claims which he may have against Coastwest Holdings and Mr Bratty*". There is no reference either in the Coastwest settlement or in the email discussions immediately prior, to the idea now advanced by Mr Trigg, that this full and final settlement was intended by

the parties to exclude holiday pay. Indeed, in contrast, clause 5 of the Coastwest settlement states that the agreement encompasses leave entitlements under the Holidays Act 2003. Also, the way the Coastwest settlement is structured as a tax-free lump sum payment rather than setting out specific types of entitlements suggests that the parties both saw benefit in an all-encompassing payment.

[82] The only way in which Mr Trigg’s claim for the payment of holiday pay by Coastwest could succeed would be for the Authority to look behind the Coastwest settlement and re-write that agreement after it has been performed.

[83] This is inappropriate. There are well-established public policy reasons why records of settlement are considered to be final and binding. They apply here.

[84] The arguments advanced by Mr Trigg have been raised before, most recently in the Employment Court in the matter of *Crossen v Yangs House Limited and Liu Yang*¹⁰ already referred to.

[85] The Court found that: “*ongoing uncertainty*”, where an employee was always free to start recovery action after entering a settlement agreement, and where the employer could never be satisfied that litigation risk had been removed, “*cannot have been intended, given the Act’s object and especially where mediation is the preferred means of resolving disputes.*”¹¹

[86] This comment equally applies in the present case.

[87] In addition, relevant factors identified by the Court as weighing against disturbing a record of settlement apply here:

- a. The Coastwest settlement agreement states at clause 2 that “*The employee has raised a personal grievance in respect of his terms and conditions of employment and subsequent redundancy. The parties agree to resolve the*

¹⁰ [2021] NZEmpC 102.

¹¹ *Ibid*, paragraph [44]

personal grievance and all matters in dispute between the parties.” This shows that at the time, the parties intended the agreement to bring their relationship to an end in a comprehensive and final manner, including everything relating to the employment, its terms and conditions, its ending, the personal grievance claims, and in addition to this, “*all matters between the parties*”¹²;

- b. The Coastwest settlement not only stated in clause 4 that it was in “*full and final settlement of all claims*” against the employer, but also that it was in full and final settlement of any claims against Mr Bratty as Director. This suggests that both parties intended the Coastwest settlement to be a final severing of their relationship in all its aspects¹³.
- c. At the time of negotiating and signing the Coastwest settlement, Mr Trigg and Mr Bratty were engaged in a wider dispute about how and when Mr Trigg’s employment with Coastwest ended, and a variety of different financial claims made by Mr Trigg against Coastwest. As shown by Clause 4, Mr Trigg and Mr Bratty negotiated a single lump sum payment to resolve all claims, which is consistent with that underlying context¹⁴; and
- d. Mr Trigg was receiving legal advice at the time he was negotiating the Coastwest settlement, and the Coastwest settlement agreement itself was countersigned by a Mediator¹⁵.

[88] Standing back and considering the circumstances at the time the Coastwest settlement was signed, it is my view that Mr Trigg and Mr Bratty representing Coastwest, were engaged in a wide-ranging and deep-seated dispute about what was owed to Mr Trigg, triggered by the

¹² A reference to settling all matters raised by way of grievance, *Ibid*, at [27] and [27].

¹³ A reference to a full and final settlement, *Ibid*, at [29].

¹⁴ A reference to the claim being made and being part of the wider resolution between the parties *Ibid*, at [32] and [33].

¹⁵ The receiving of advice *Ibid*, see references at [21] and [30].

ending of Mr Trigg's employment with Coastwest when the purchasers of the business declined (at least, at that time) to take him on as employee.

[89] It is significant that the Coastwest settlement contains a provision whereby Mr Trigg sought (and secured) recourse against Mr Bratty personally, in the event that Coastwest defaulted on its agreed payments to him, or any additional tax liability was incurred. Mr Bratty agreed to provide a personal guarantee for the payments to be made by Coastwest in accordance with the Coastwest settlement, but also secured for himself a full and final settlement of "*all claims*" Mr Trigg might have against him in his personal capacity, as well as a full and final settlement of "*all claims*" Mr Trigg might have against Coastwest.

[90] All of this suggests that at the time, both Mr Trigg and Mr Bratty intended the Coastwest settlement to bring a true ending to all matters in dispute between them, in consideration for the payment as set out in the Coastwest settlement agreement itself. Finally, that payment was of sufficient size to suggest that this in fact occurred.

[91] Mr Trigg was receiving legal advice and was actively exercising his rights to pursue Coastwest for monies he believed he was owed. Against this background, he agreed to resolve "*all matters in dispute*" between himself, Coastwest, and Mr Bratty, and to receive payment "*in full and final settlement of all claims he may have against Coastwest Holdings Ltd and Mr Bratty*". He took no steps to exclude holiday pay from the ambit of this settlement, which would have been inconsistent with the desire for finality and comprehensiveness expressed in the text of the agreement itself. In contrast, the Coastwest settlement does contain a clause recording that no minimum entitlements under the Holidays Act 2003 have been foregone.

[92] The Coastwest settlement was performed according to its terms. It is not appropriate to now interpret the Coastwest settlement as excluding payment for holiday pay when the document itself does not say this and instead has been written in such a way as to encompass all claims including holiday pay, on a plain reading of its terms.

[93] Mr Trigg's claim for payment of holiday pay by Coastwest does not succeed, as the Coastwest settlement was a full and final settlement of all claims between Mr Trigg and Coastwest.

Costs

[94] As no party applied for costs, and all parties were self-represented, no orders for costs are made.

Claire English
Member of the Employment Relations Authority