

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2023] NZERA 235  
3190039

BETWEEN SOUTH ISLAND FILTERS  
Applicant

AND JOSHUA DAVID BELL  
Respondent

Member of Authority: Lucia Vincent

Representatives: Linda Koleda, for the Applicant  
No attendance by the Respondent

Investigation Meeting: 16 February 2023

Submissions Received: 16 February 2023 and further information received up to and  
including 16 March 2023.

Date of Determination: 10 May 2023

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] South Island Filters (SIF) has asked the Authority to order Mr Bell repay SIF \$500 it says it overpaid to him on 26 August 2022 (overpayment). Linda Koleda, SIF's Office Manager, says she made the overpayment by mistake when she transferred money from SIF to Mr Bell in accordance with a record of settlement reached between them and signed off by a mediator under section 149 of the Employment Relations Act 2000 (Act).

[2] Ms Koleda has attempted unsuccessfully to recover the overpayment by approaching Mr Bell's representative from the mediation process.

[3] Regrettably, relevant documents failed to consistently identify an employer party, and in particular, any legal entity. This issue created a particular problem when considering what (if any) orders I could make.

**How did the Authority investigate?**

[4] I have considered SIF's statement of problem, supporting documents and submissions during the investigation meeting on 16 February 2023. I have also had regard to further information provided by SIF up to and including by email on 16 March 2023.

[5] Despite being sent the statement of problem, directions of the Authority and notice of investigation meeting, Mr Bell did not attend nor engage with the Authority in any way. In the absence of any good cause for failing to attend, I decided to proceed in his absence.<sup>1</sup>

[6] To investigate this matter, I have referred to limited aspects of the record of settlement. The parties are reminded of their obligations under section 148 of the Act to keep confidential all remaining aspects.

[7] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified any orders made. It has not recorded all evidence and submissions received.

**What are the issues?**

[8] The issues requiring investigation and determination were:

- (a) Who is SIF?
- (b) What (if any) order can the Authority make?

**Who is SIF?**

[9] The following inconsistencies in relevant documents meant SIF failed to accurately identify itself, and in particular, any legal entity:

- (a) The application to the Authority named the applicant as SIF, a trading name appearing on the website for Linda and her husband's business.<sup>2</sup> The website that advertises SIF does not refer to a company although it refers to Linda and her husband as the owners.
- (b) The record of settlement provided to the Authority named SIF as the employer party.<sup>3</sup> Ms Koleda signed it on behalf of SIF. Linda confirmed she had authority

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<sup>1</sup> In accordance with regulation 12, Schedule 2, Act.

<sup>2</sup> <https://www.sifilters.co.nz/About-Us/>

<sup>3</sup> This document was signed for SIF by Linda Palmer, a surname Linda sometimes goes by.

to enter into the record of settlement on behalf of SIF. The document did not refer to any company.

- (c) The employee acknowledgment page provided from an individual employment agreement signed by Mr Bell, identifies South Island Filters Limited as his employer. A search of the Companies Office Register reveals this entity does not exist.

[10] Ms Koleda acknowledged the above documents ought to have identified the company owned and directed by her husband, Air Line Piping Solutions Limited (ALPSL). ALPSL trades as SIF.<sup>4</sup>

[11] The bank statement and bank account information supplied shows the overpayment to Mr Bell came from SIF but does not identify who owned the bank account i.e. a legal entity connected to the bank account. In response to a request for further information that could confirm the legal entity in which the bank account was in (such as an individual or ALPSL), we received an email from ALPSL's director saying (among other things) that both businesses had the same company number. In this email the director signed off as director for ALPSL "TA SI filters."

[12] The New Zealand Business Number entry for ALPSL records APL Ltd as the trading name with a website [air4u.co.nz](http://air4u.co.nz) which does not appear to exist.<sup>5</sup> The Companies Register refers to similar information.

[13] Given the inconsistencies above, I cannot with any certainty say who SIF is for the purposes of making the order sought. It remains unclear who (and what legal entity) made the overpayment, was party to the record of settlement and potentially entitled to recovery.

[14] I have considered whether I should correct the party name<sup>6</sup> because I understood Ms Koleda to say it should be ALPSL. However, I am not satisfied it would be appropriate to make this correction when the applicant has not accurately identified itself. I am reinforced in this view because SIF must rely on a record of settlement as proof of overpayment – a document also failing to identify ALPSL. Ms Koleda acknowledged relevant documents ought to have

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<sup>4</sup> <https://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/5801987>.

<sup>5</sup> <https://www.nzbn.govt.nz/mynzbn/nzbn/details/9429041971451?sw=air%20line%20piping%20solutions>

<sup>6</sup> As permitted by sections 219 or 221 of the Act.

named identified ALPSL (trading as SIF). A company bears an obligation to clearly identify itself in documents creating a legal obligation.<sup>7</sup> ALPSL has failed to do so.

[15] I cannot reconcile recovery of an overpayment with ALPSL's failures to accurately identify itself when entering into legal obligations such as those contained in a record of settlement and employment agreement. It remains unclear to me who made the overpayment.

**What (if any) orders can the Authority make?**

[16] Having been unable to identify a legal entity to which any order could be made, it follows that I cannot make the order sought.

**Result**

[17] I decline to make the order sought by SIF.

[18] Neither party having been represented in the Authority, no issue as to costs arises.

**Lucia Vincent**  
**Member of the Employment Relations Authority**

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<sup>7</sup> As required under section 25 of the Companies Act 1993.