

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 32  
3191079

BETWEEN

KYLE HEAD  
Applicant

AND

THE SALVATION ARMY  
INCORPORATED SOUTHERN  
BUSINESS HUB  
Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in Person  
Tim Kendall, representing the Respondent

Investigation Meeting: On the papers

Determination: 23 January 2023

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, Ms Kyle Head, claims that the Respondent, The Salvation Army Incorporated Southern Business Hub (The Salvation Army) has not complied with clauses 2 and 5 of a mediated Record of Settlement.

[2] The Salvation Army claims that it has complied with clause 2 of the Record of Settlement, albeit later than agreed, and that it has complied with clause 5 of the Record of Settlement .

**The Authority's investigation**

[3] The parties discussed and agreed that this matter would be determined on the papers provided to the Authority. I have therefore fully considered the Statement of Problem, the Statement in Reply, the Amended Statement of Problem and the Amended Statement in Reply, and further submissions by the Applicant.

[4] 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.

### **Issues**

[5] The issues requiring investigation are whether or not the Salvation Army has complied with clauses 2 and 5 of the Record of Settlement.

### **Relevant Background**

[6] Ms Head was an employee of The Salvation Army. An employment dispute arose between them and the parties entered into the Record of Settlement which was certified by a mediator under s 149 of the Employment Relations Act 2000 (the ROS).

[7] The ROS was entered into under s. 149 of the Employment Relations Act 2000 (the Act) and signed by the Applicant on 30 June 2022. It was also signed by a representative of The Salvation Army on 1 July 2022. The ROS was signed by a Mediator employed by the Ministry of Business, Innovation and Employment (MBIE) on 4 July 2022. The ROS is dated 22 June 2022.

[8] The relevant clauses of the ROS in respect of this issue are:

2. The Employer shall, without admission of liability, pay the Employee, within 7 days of the date of this agreement, the sum of \$2,000 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.
5. The Employer will issue within 7 days of this agreement a certificate of service for the Employee to cover dates of employment, position held, description of duties and confirming that she resigned. It will respond to any enquiries concerning her in terms consistent with the certificate of service.

[9] 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.

[10] Ms Head claims that she received payment of the sum due under clause 2 of the ROS on 13 July 2022, and the certificate of service on 1 August 2022.

**Did The Salvation Army comply with clause 2 of the ROS?**

[11] Mr Kendall submits that Ms Head did not provide her bank account details until 8 days following mediation, and it did not receive a copy of the ROS signed by Ms Head until 7 days after mediation.

[12] Having received that information, it made payment, albeit by 13 July 2022.

[13] Having considered this matter I determine that The Salvation Army did not comply with clause 2 of the ROS.

**Did The Salvation Army comply with clause 5 of the ROS?**

[14] Clause 5 of the ROS states that a certificate of service for Ms Head should contain the following information:

- The dates of her employment;
- The position she held;
- A description of her duties; and
- Confirmation that she resigned.

[15] Ms Head's evidence is that she received a first certificate of service on 28 June 2022 which was not compliant with the ROS in that it had no letterhead, signature, description of duties or contact details.

[16] The Salvation Army amended the Certificate of Service and provided Ms Head with a second one on dated 1 August 2022. Ms Head stated that was not compliant either and it was further amended on 13 September 2022, although it remained dated as 1 August 2022.

[17] The third Certificate of Service dated 1 August 2022 has been provided to the Authority. I find that the details of it fulfils the requirements of the Certificate of Service as set out at clause 5 of the ROS, it covers:

- Ms Head's dates of employment;
- the position she held;
- the duties she was required to fulfil; and
- conforms that she resigned.

[18] It further provides contact details of the HRIS & Payroll Team Leader at The Salvation Army who could be contacted by any respective future employer.

[19] Ms Head submits that the Certificate of Service does not clarify that she worked at three separate stores or set out her duties in detail. However, those detail are not specified as needing to be covered in clause 5 of the ROS.

[20] As set out in clause 5 of the ROS, the Certificate of Service was to be issued: “within 7 days of the date of this agreement”. The ROS is dated 22 June 2022; however, the ROS became effective following the affirmation set out at s 149(3) of the Act. Once that affirmation has been made by the parties to a Record of Settlement, the Mediator signs it.

[21] The ROS was signed by the Mediator on 4 July 2022. Taking that date as the “date of this agreement”, the compliant Certificate of Service was not provided to Ms Head on the specified date.

[22] Accordingly, I determine that The Salvation Army did not comply with clause 5 of the ROS.

### **Remedies**

#### **Compliance Order**

[23] The Record of Settlement states in clause 2 that the Salvation Army would pay Ms Head the sum of \$2,000.00. That payment has been made and therefore it is not appropriate to order compliance.

[24] The Record of Settlement states in clause 5 that a Certificate of Service would be provided fulfilling the stated parameters. The Certificate of Service has been provided, and therefore it is not appropriate to order compliance.

#### **Penalties**

[25] Ms Head, who is self-represented, has sought an apology and compensation in respect of the claimed breaches. Neither are remedies available for breach of a mediated ROS.

[26] Ms Head has not sought a penalty and consequently no order for penalties is made.

#### **Filing Fee**

[27] **The Salvation Army must reimburse Ms Head the filing fee of \$71.56 within 14 days of the date of this Determination.**

**Costs**

[28] While costs are reserved, I note here that, subject to her submissions, Ms Head represented herself and, unless she incurred legal costs, it is therefore unlikely she has grounds to claim a contribution to any fair and reasonable costs.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**