

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 424
3206379

BETWEEN	AKHIL ROY Applicant
AND	MIX MART LIMITED First Respondent
	ANI KALAMPUKATTU SHAJI Second Respondent

Member of Authority:	Alex Leulu
Representatives:	Applicant in person Second Respondent in person and on behalf of the First Respondent
Investigation Meeting:	22 May 2023 by audio-visual link
Submissions and further information received:	26 May 2023 and 22 June 2023 from the Applicant 5 June 2023 from the Respondent
Determination:	08 August 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Akhil Roy worked as a studio manager for Mix Mart Limited (Mix Mart) at its tattoo studio in Tauranga. Ani Kalampukattu Shaji is the sole director of Mix Mart.

[2] On 28 September 2022 Mr Roy entered into a settlement agreement (the settlement agreement) with Mix Mart and Mr Shaji. The settlement agreement was certified in the form of a record of settlement by an employment mediator.¹

¹ Employment Relations Act 2000, s 149.

[3] As part of the settlement agreement, Mr Shaji and Mix Mart agreed to pay Mr Roy monetary amounts at specified times. On 21 December 2022 Mr Roy lodged a claim to the Authority against Mr Shaji and Mix Mart for compliance with the settlement agreement and for the imposition of a penalty under the Employment Relations Act 2000 (the Act).² At the time, Mr Roy claimed Mr Shaji and Mix Mart failed to pay all the agreed amounts under the settlement agreement.

[4] After Mr Roy's claim was lodged with the Authority, Mr Shaji and Mix Mart paid the outstanding amounts to Mr Roy. Because these payments were not made when they were due, Mr Roy still sought a penalty against Mr Shaji and Mix Mart for breach of the settlement agreement. Mr Shaji opposed Mr Roy's claim for penalty action.

The Authority's investigation

[5] Both Mr Roy and Mr Shaji attended the investigation meeting which was held by audio-visual link. They gave evidence under affirmation. 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 orders made. It has not recorded all evidence and submissions received.

The issues

[6] The issues requiring investigation and determination are:

- (a) Did Mr Shaji and Mix Mart breach the settlement agreement by failing to pay monetary amounts owed to Mr Roy within the agreed timeframe?
- (b) If a breach is established, should a penalty be ordered against Mr Shaji and Mix Mart and if so, should the sum or part thereof be awarded to Mr Roy?
- (c) Is Mr Roy entitled to a contribution to costs incurred in pursuing this application including reimbursement of the filing fee of \$71.56 incurred in lodging his application?

² Employment Relations Act 2000, ss 137(1)(a)(iii) and 149(4).

Was the settlement agreement breached?

[7] As part of the settlement agreement Mix Mart and Mr Shaji were to pay Mr Roy four instalments made up of a settlement payment of \$2200 and holiday pay of \$295 gross. Each instalment was to be paid on the following dates:

- (i) 20 October 2022;
- (ii) 30 October 2022;
- (iii) 20 November 2022; and
- (iv) 30 November 2022.

[8] The parties agreed Mix Mart and Mr Shaji failed to pay Mr Roy in line with the agreed payment timetable. The first two scheduled payments in October 2022 were paid in accordance with the agreement with Mr Roy receiving two instalment payments each consisting of the settlement amount of \$2200 and holiday pay at the net amount of \$236. The third and fourth payments were not paid until 20 January 2023 and 20 February 2023 respectively.

[9] I accept Mix Mart and Mr Shaji failed to comply with the settlement agreement by failing to pay Mr Roy the agreed third and fourth payments when they were due on 20 and 30 November 2022.

Should a penalty be imposed?

[10] The Authority may impose a penalty against a party in respect of any breach of a settlement agreement.³

[11] The imposition of a penalty is discretionary and is generally imposed as a punishment. In this case the imposition of a penalty will serve as a deterrent to uphold the integrity of settlement agreements under the Act. The penalty for a single breach of a settlement agreement may be up to \$10,000 for an individual and \$20,000 for a company.⁴

³ Employment Relations Act 2000, s 149(4).

⁴ Employment Relations Act 2000, s 135(2).

[12] In determining an appropriate penalty, the Authority considers all relevant matters as identified in s 133A of the Act and relevant principles developed in case law.⁵

[13] Settlement agreements under the s 149 of the Act are full, final, binding and enforceable. The integrity of these agreements must be maintained and for this reason the imposition of a penalty is necessary.

[14] Mix Mart and Mr Shaji's breach of the settlement agreement was not inadvertent, minor or technical. When he agreed to the settlement agreement, Mr Shaji said Mix Mart's tattoo studio stopped operating and the company was beginning to struggle financially. Mr Shaji also submitted evidence showing the current status of various Mix Mart debts which included a debt of over \$135,000 owed to the Inland Revenue Department. He also submitted evidence of his own personal debts. I accept Mr Shaji and Mix Mart are currently facing financial difficulties and this can be taken into account when assessing an appropriate penalty level.

[15] Mr Roy said he suffered stress and hardship because Mr Shaji and Mix Mart failed to pay the third and fourth instalment in line with the settlement agreement. He was supporting his family in India and was also planning for his own wedding. At the time the instalments were due, he was forced to borrow money from friends to meet certain financial deadlines because the instalments were not paid on time. Mr Roy did not specifically identify the extent of the financial impact in his evidence.

[16] There was no evidence to show either Mr Shaji or Mix Mart had previously appeared before the Authority for similar breaches.

[17] Taking all the factors into account I find Mr Shaji and Mix Mart are jointly and severally liable for a penalty of \$700. This is within the range of penalties currently imposed for failure to pay monies due under a record of settlement and is proportionate to the seriousness of the breach and harm caused. Mr Shaji and Mix Mart is to pay the penalty to the Authority within 28 days of this determination. In accordance with s 136 of the Act, that amount must then be paid by the Authority into a Crown bank account.

⁵ *Boorsboom v Preet PVT Limited* [2016] NZEmpC 143 at [138]-[151], *Nicholson v Ford* [2018] NZEmpC 132 at [18] and *Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12 at [19].

Costs and reimbursement of filing fee

[18] Neither party was represented and so there is no issue as to the costs.

[19] Mr Roy's claim for the imposition of a penalty was successful and accordingly I direct Mix Mart Limited and Mr Shaji to reimburse him for the filing fee of \$71.56 within 28 days of the date of this determination.

Alex Leulu
Member of the Employment Relations Authority