

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2023] NZERA 755
3209259

BETWEEN AMANPREET SINGH
Applicant

AND ATATURK ENTERPRISES
LIMITED
First Respondent

AND OZGUR ISERI
Second Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: John Wood, advocate for the Applicant
Ozgur Iseri for the Respondents

Investigation Meeting: On the papers

Submissions Received: 7 August, 2 November and 8 December 2023 from
Applicant
14 September, 2 November and 8 December from the
Respondents

Determination: 18 December 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Amanpreet Singh concluded an employment matter by entering into a record of settlement with the respondents, Ataturk Enterprises Limited (AEL) and Ozgur Iseri, in accordance with s 149 of the Employment Relations Act 2000 (“the Act”). The payment of monies owing was to be by way of a payment plan.

[2] On 8 July 2022, a Ministry of Business, Innovation and Employment mediator certified the parties’ agreement. The effect of certification is that the terms agreed were final and binding and could only be brought before the Authority for the purposes of enforcement.

[3] Mr Singh says AEL and Mr Iseri breached the settlement agreement when the full agreed settlement amount was not paid. Mr Singh accepted that some money had been paid but he also had communications from Mr Iseri indicating nothing further would be paid.

[4] Mr Iseri asserted financial difficulties and had issues with Mr Singh previous representative.

The Authority's investigation

[5] At the case management teleconference on 25 July 2023 the parties agreed the matter could be heard on the papers. Both parties were invited to provide affidavit evidence to show what had been paid, what was outstanding as well as written submissions. Mr Singh's new representative submitted that the outstanding amount due to Mr Singh under the settlement agreement was \$6025.00.

[6] If Mr Iseri disputed the amount owing and he was invited to provide information from his perspective about what, if any money was outstanding. Mr Iseri was also to indicate whether he considered a compliance order was necessary in light of his partial agreement to pay money to Mr Singh.

[7] Submissions and affidavit evidence were received from and on behalf of Mr Singh. Mr Iseri provided evidence of one bank transfer in accordance with the timetable. Mr Iseri then paid the outstanding balance in several instalments with the final payment on 4 December 2023.

[8] Mr Singh's representative confirmed he is still seeking an Authority determination awarding penalties, interest and costs.

Breaches of the settlement agreement

[9] Clauses 2 and 3 of the settlement agreement between the parties provided AEL and Mr Iseri would pay Mr Singh \$10,000 and representative's costs of \$5,500.00 plus GST.

[10] A payment plan was agreed and recorded in the settlement agreement to allow the employer to meet its obligations. At the time Mr Singh applied for a compliance order, the first and second payments had been made but were late and the third payment

had not been made. Mr Iseri had also indicated the final amount would not be paid in the future.

[11] At the point in time when Mr Singh's application for a compliance order was lodged in the Authority, the total outstanding was \$6,025.00. Mr Iseri then made several more payments to Mr Singh's representative. On 8 December 2023, Mr Singh's representative confirmed with the Authority that the last payment received on 4 December from Mr Iseri cleared the outstanding balance.

[12] It is clear there was a breach of the settlement agreement because although the money owing to Mr Singh under the settlement agreement was eventually paid, none of the amounts due in accordance with the payment plan set out at clause 4 of the settlement agreement were paid on time. The first and second payments were due on or before 5 August 2022 and 5 September 2022. With the outstanding balance for the third payment being made on 4 December 2023, this is over a year later than what was specified in clause 4 of the settlement agreement. That payment was due in accordance with the settlement agreement on or before 5 October 2022.

[13] Because there was a breach of the agreed terms of the settlement agreement, AEL and Mr Iseri are liable to a penalty.¹

Should a penalty be awarded?

[14] The maximum penalty is \$20,000 in the case of a company and \$10,000 in the case of an individual.² The standard of proof for the imposition of a penalty in this jurisdiction is on the balance of probabilities.³ The primary purpose of a penalty is to punish the wrongdoing and act as a deterrent to further breaches.⁴ Penalties can be appropriate for breaches of settlement agreements in order to protect the finality and integrity of s 149 agreements.

[15] It is important that parties ought to have confidence in settlement agreements under s 149 of the Act and in this case, there has been a breach of the settlement agreement in that monies owing under that agreement were paid late.

¹ Above n2, s 149(4).

² Above n2, s135(2).

³ *Xu v McIntosh* [2004] 2 ERNZ 448 at [29].

⁴ *Borsboom v Preet PVT Ltd* [2016] NZEmpC 143 at [51] – [52].

[16] Mr Iseri cited financial difficulties on more than one occasion and despite his earlier refusal to pay the balance, once the compliance order application was lodged, he paid the balance owing under the agreement, albeit late. Taking into account the relevant matters the Authority must have regard to when awarding penalties⁵ and the further guidance on penalties for breaches of settlement agreements set out in *ITE v ALA*,⁶ I decline to order a penalty.

[17] I consider that orders requiring interest and costs are however appropriate.

Interest

[18] The Authority has the discretion to award interest under clause 11 of the second schedule to the Act. Interest is to reimburse someone for the loss of the use of the monies to which there is an established entitlement. It is appropriate where a person has been deprived of the use of money to make an award for interest. Mr Iseri has indicated he agrees with that proposition in his last communication to the Authority.

[19] Given how long it took for the money owing under the settlement agreement and Mr Iseri's indication, I consider that an order for interest to be paid for the periods of time the amounts owing remained outstanding to the date they were paid is appropriate. Interest is to be calculated in accordance with schedule 2 of the Interest on Money Claims Act 2016 using the civil debt interest calculator.⁷

Costs

[20] The Authority has discretion to award costs. Mr Singh's representative seeks costs of \$1,125.00, equivalent to one quarter of the daily tariff. The matter was heard on the papers, but it is appropriate to make an award of costs for preparation and filing the compliance order application which ultimately resulted in the money being paid. In the overall circumstances I consider an award of costs in the amount of \$1,000.00 is appropriate together with reimbursement of the filing fee.⁸

Orders

[21] Ataturk Enterprises Limited and Mr Iseri are ordered to pay Amanpreet Singh:

⁵ Above n2, s 133A.

⁶ *ITE v ALA* [2016] NZEmpC 42 at [61].

⁷ <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>

⁸ <https://www.era.govt.nz/determinations/awarding-costs-remedies/>

- (a) Interest for the period any money was owing from the due date until payment under the settlement agreement under s 149(3) of the Act ; and
- (b) An award of costs in the amount of \$1,000.00 together with the filing fee of \$71.56.

Sarah Kennedy-Martin
Member of the Employment Relations Authority