

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 470
3292099

BETWEEN MANINDER SINGH
Applicant

AND KANJI CORPORATION
LIMITED
Respondent

Member of Authority: Sarah Blick

Representatives: Sunny Sehgal, advocate for the applicant
Sam Kanji for the respondent

Investigation meeting: On the papers

Submissions and
information received: 11, 12 and 31 July 2024 from the applicant
10 July 2024 from the respondent

Determination: 2 August 2024

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Maninder Singh says Kanji Corporation Limited (KCL) failed to comply with the terms of a record of settlement which both parties had signed by 8 April 2024. The agreement was subsequently certified by a Ministry of Business, Innovation and Employment (MBIE) mediator. Terms of the agreement were met except for clause 6, which recorded that KCL would make a contribution to costs to Mr Singh's representative. The costs amount was not paid and Mr Singh's representative promptly made an application to the Authority, seeking a compliance order, interest, penalties and costs relating to this application.

[2] KCL shortly thereafter paid the outstanding costs amount. Mr Singh now seeks only penalties and costs. KCL says payment has been made in accordance with the agreement.

The Authority's process

[3] A case management conference was held with the parties. KCL's director Shylesh (Sam) Kanji attended for KCL. At the conference Mr Singh's representative confirmed the costs payment had been received but penalties and costs were still sought. The Authority timetabled the lodging of information and submissions from the parties which have been received and considered. This matter is determined on the papers by consent.

[4] As permitted by s 174E of the Employment Relations Act 2000 this determination does not record all the evidence and submissions received and considered during the Authority's investigation but has stated findings of fact and law, and expressed conclusions on issues necessary to dispose of the matter.

The issues

[5] The issues for investigation and determination are:

- (a) Has the agreement been breached?
- (b) What relevance if any does s 150A of the Act have on the application?
- (c) Should a penalty be imposed on KCL?
- (d) Should costs be awarded in relation to the application?

Background

[6] Clause 6 of the agreement relevantly stated:

Kanji Corporation Limited agrees to pay a contribution of \$3000 plus GST to the employee's representative within 3 days of receipt of an invoice.

[7] On 08 April 2024, the company with which Mr Singh's representative is associated issued an invoice to KCL. The invoice was for \$3,450 (the costs amount including GST). The agreement was certified by the MBIE mediator the day after.

[8] Mr Singh's representative says despite multiple reminders sent by him to KCL, including emails on 16 April 2024, 17 April 2024, and 18 April 2024, a text message on 16 April 2024 and multiple calls, the costs payment was not received.

[9] Mr Singh promptly lodged an application with the Authority on 18 April 2024. The Authority's records show although the Authority emailed Mr Kanji on 19 April

2024 checking if service of the statement of problem could be made electronically, service of it was not able to be confirmed until 4 June 2024.

[10] A day after the application was lodged, on 19 April 2024, KCL processed the costs payment, which was received on or about 22 April 2024.

[11] By way of submission, Mr Singh's representative says KCL's late payment caused "significant distress" to Mr Singh, and has resulted in additional expenses, including the Authority application fee and costs incurred in submitting the application. There is no direct evidence from Mr Singh confirming these points.

Discussion

Has the agreement been breached?

[12] Payment of the costs amount was due by 11 or 12 April 2024. Although the delay in the costs payment lasted a matter of days, KCL did breach the terms of clause 6 of the agreement, as the amount was not paid within three days of an invoice being presented to it.

What relevance if any does s 150A of the Act have to the application?

[13] Section 150A of the Act provides that any payment by one party to another made pursuant to an agreed term of settlement must be paid directly to the other party, and not to a representative, unless the party receiving payment is receiving legal aid, or the party is being represented by a solicitor.¹

[14] In the present case, Mr Singh through his representative has provided brief submissions on s 150A, saying the term was agreed upon by the parties, confirmed by a mediator, and that he was entitled to enforce the term of settlement. An earlier Authority determination was cited in which a compliance order was issued requiring payment to a party's advocate, in line with an agreed term of settlement.²

[15] As noted by the Authority recently, s 150A has stringent requirements, is protective and prescriptive, and applies to all people that fall within its scope - both those who are well-intentioned and acting in good faith as well as those who might not

¹ Employment Relations Act 2000, section 150A(3).

² *Maree v Sanem Digital Limited* [2023] NZERA 50.

be.³ The meaning and application of s 150A is clear and cannot be disregarded by the Authority.

[16] The difficulty here is that the wording of the agreement and the costs payment made pursuant to it are contrary to section 150A of the Act. Neither of the exceptions in s 150A applied in this case. Mr Singh was entitled to try and enforce the terms of settlement, and if the costs amount remained unpaid, the Authority would likely have issued a compliance order requiring the costs amount be paid to Mr Singh directly.⁴

[17] Subsection 150A(2) states that a payment not complying with subsection (1) “is to be treated as if the payment has not been made”. Clause 6 has now been complied with, payment having been made. I do not propose to treat the payment as if it had not been made, as this is not an outcome sought on Mr Singh’s behalf.

Should a penalty be imposed on KCL?

[18] Settlement agreements certified under s 149 of the Act have a special statutory status and provide certainty and finality for parties who resolve their employment relationship problems under that provision of the Act. Breaching those terms seriously undermines the integrity of this statutory scheme. I would have imposed a small penalty on KCL, but do not consider it appropriate to impose a penalty in circumstances where the breach relates to a term of settlement and payment which did not comply with s 150A of the Act.

Outcome

[19] The application for a penalty is declined.

Costs

[20] Given the above findings and outcome, the Authority finds that costs should lie where they fall.

Sarah Blick
Member of the Employment Relations Authority

³ *KQJ v RXT and Ors* [2024 NZERA 281 at [61]-[62]. See also *Armstrong v MTS Energy Ltd* [2023] NZERA 72, at [17]-[18].

⁴ Pursuant to Employment Relations Act 2000, s 157(3).