

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2024] NZERA 518
3298319

BETWEEN Krittiyada Saphoo
 First Applicant

 Kitti Yingkamhang
 Second Applicant

AND Nitipat Yunan T/A Mr Yunan
 Respondent

Member of Authority: Philip Cheyne

Representatives: Edwin van de Koolwijk, for the Applicants
 No appearance by the Respondent

Investigation Meeting: 28 August 2024 in Christchurch

Oral Determination delivered: 28 August 2024

Written Determination issued: 29 August 2024

ORAL DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

This determination is a written record of an oral determination delivered on 28 August 2024.

Employment Relationship Problem

[1] Krittiyada Saphoo and Kitti Yingkamhang entered into a record of settlement with their former employer Nitipat Yunan T/A Mr Yunan.

[2] Ms Saphoo and Mr Yingkamhang say that Nitipat Yunan failed to comply with the record of settlement. They seek full payment of the amounts in the record of settlement, interest, penalties and costs.

[3] Nitipat Yunan has not lodged a statement in reply.

The Authority's Investigation

[4] The statement of problem was sent by registered post to Nitipat Yunan's last known residence. I am satisfied that Nitipat Yunan was served with the statement of problem. Nitipat Yunan did not respond to the Authority.

[5] A case management conference was arranged. Nitipat Yunan was given notice of the conference and steps he needed to take to participate. However, Nitipat Yunan did not respond or participate.

[6] I set an investigation meeting for today. I directed notice of the investigation meeting to be served on Nitipat Yunan by delivery to his residential address, by email to a Hotmail address and by message to his cell phone number. I am satisfied from the file that these steps were all taken. Mr van de Koolwijk has confirmed that all these channels are Nitipat Yunan's current contact details, to the best of his knowledge.

[7] Nitipat Yunan did not attend the investigation meeting.

[8] Ms Saphoo and Mr Yingkamhang both attended by phone and answered my questions.

A compliance order is appropriate

[9] The record of settlement was signed by Ms Saphoo and Mr Yingkamhang and by Nitipat Yunan. It was also signed by a mediator in accordance with s 149 of the Employment Relations Act 2000. It is final, binding and enforceable.

[10] Nitipat Yunan was required to pay \$1,337.54 to Ms Saphoo and \$2,254.55 to Mr Yingkamhang. Payment to each employee was due in two tranches, the first of \$600.00 each within 24 hours of the settlement and the second by no later than 28 February 2024.

[11] Nitipat Yunan paid \$1,200.00 into Mr Yingkamhang's bank account, nothing separately to Ms Saphoo and defaulted completely on the second payments that were due on 28 February 2024. Mr Yingkamhang is owed a balance of \$1,054.55 and Ms Saphoo is still owed the original \$1,337.54.

[12] I find that Nitipat Yunan has not complied with the payment obligations in paragraphs 2 and 3 of the record of settlement. Grounds for a compliance order under s 137 of the Employment Relations Act 2000 are established.

[13] There is evidence that Nitipat Yunan ignores obligations, thinking that they will go away. I am satisfied that a compliance order is appropriate for the purpose of preventing further non-compliance with the payment obligations under the record of settlement.

[14] I draw Nitipat Yunan's attention to s 140(6) of the Employment Relations Act 2000 which empowers the Employment Court, on application, to imprison, fine and sequester the property of a person who fails to comply with the Authority's compliance order.

A penalty is appropriate

[15] The Employment Relations Act 2000 at s 149(4) provides that a person who breaches an agreed term in a record of settlement is liable to a penalty imposed by the Authority.

[16] Ms Saphoo and Mr Yingkamhang are each entitled to take action to recover a penalty as they are each affected by the breach of the record of settlement. Under s 135(2) of the Employment Relations Act 2000, Nitipat Yunan is liable to Ms Saphoo for a penalty of up to \$10,000.00 and to Mr Yingkamhang for a further penalty of up to \$10,000.00.

[17] It is important to promote mediation as the primary problem-solving mechanism under the Act. The short point is that the applicants settled their employment relationship problems through mediation and their former employer should have complied with the settlement. This action should not have been necessary. Deterrence is an important part of assessing a penalty here.

[18] There is no evidence that Nitipat Yunan is not able to pay the amounts owed under the settlement.

[19] I find that the breaches were intentional. I base this on information from Mr van de Koolwijk, who has some insight into Nitipat Yunan's business dealings. Nitipat Yunan did not complete the settlement and has done nothing to mitigate the adverse effects of the breaches. However, he has not been found by the Authority or the Court to have engaged in similar conduct previously.

[20] The applicants speak little English, have limited resources and the settlements related to statutory entitlements that should have been paid in August 2023. They are vulnerable employees who have not received payment of their statutory entitlements.

[21] Having regard to the foregoing, I fix \$2,500.00 as the appropriate total penalty payable for the breaches. It is appropriate to split that on the basis of \$1,500.00 for the breach with respect to Ms Saphoo and \$1,000.00 for the breach with respect to Mr Yingkamhang, given Ms Saphoo was more affected.

[22] Ms Saphoo and Mr Yingkamhang have suffered on-going stress and hardship from not receiving the payments. They have no legal recourse other than enforcement. It is appropriate to order the whole of each penalty payable to them as the affected parties.

Conclusion and Orders

[23] Nitipat Yunan is ordered to comply with the record of settlement dated 5 January 2024 by paying \$1,337.54 to Krittiyada Saphoo and \$1,054.55 to Kitti Yingkamhang by no later

than Wednesday 11 September 2024. Payments are to be made to the bank accounts noted in the record of settlement.

[24] I impose a penalty on Nitipat Yunan of \$1,500.00 for the breach of the record of settlement with regard to Krittiyada Saphoo. Nitipat Yunan is to pay that penalty to Krittiyada Saphoo by no later than Wednesday 11 September 2024.

[25] I impose a penalty on Nitipat Yunan of \$1,000.00 for the breach of the record of settlement with regard to Kitti Yingkamhang. Nitipat Yunan is to pay that penalty to Kitti Yingkamhang by no later than Wednesday 11 September 2024.

[26] There is a claim for interest at the rate of 10%. However, the Authority only has power to award interest calculated in accordance with Interest on Money Claims Act 2016. The foregoing orders are sufficient remedy for the breaches, so I decline to calculate and order interest.

[27] There is a claim for costs. Ms Saphoo and Mr Yingkamhang are entitled to recover the cost of the lodgement fee, having succeeded in this claim. Nitipat Yunan is to pay \$71.55 to Krittiyada Saphoo and Kitti Yingkamhang by 11 September 2024.

Philip Cheyne
Member of the Employment Relations Authority