

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 157
3316480

BETWEEN XIAOSONG WU
Applicant

AND GRANDE CONSTRUCTION
LIMITED
First Respondent

AND CANG LI
Second Respondent

Member of Authority: Nicola Craig

Representatives: Mins Chang, advocate for the applicant
Cang Li in person and for the first respondent

Investigation Meeting: On the papers

Submissions (and other information) received: 4 November and 19 December 2024 for the applicant
Nothing provided for the respondents

Determination: 14 March 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] A settlement agreement was reached between Xiaosong Wu, his employer Grande Construction Limited (Grande or the company) and Grande's sole director and shareholder Cang Li. That agreement was signed by the parties and also by a mediator from the Ministry of Business, Innovation and Employment under s 149 of the Employment Relations Act 2000 (the Act).

[2] A sum owed to Mr Wu, without admission of liability, was paid but an amount to be paid towards Mr Wu's legal costs was not.

[3] An application was lodged in the Authority seeking a compliance order requiring payment of the legal costs, interest, penalties and costs.

Authority's investigation

[4] A case management conference was held with the representatives to discuss this matter. At that point Grande's director indicated the legal costs under the settlement agreement had been paid. Mr Wu's representative wanted to check that payment had been received and still pursue a penalty for breach and interest for the period the money was outstanding.

[5] It was agreed that this matter could be heard on the papers with a timetable set for submissions, including on s 150A of the Act regarding payments on resolution. The parties were allowed time to attempt to resolve the issues first. Resolution was not reached. Submissions were received on Mr Wu's behalf but as they did not deal with s 150A, comment on that provision was sought and provided. Nothing was received from Grande or Mr Li although what was said on their behalf at the case management conference is taken into account.

[6] As permitted by s 174E of the Act this determination has not recorded everything received from the parties but has stated findings of fact and law and expressed conclusions.

Issues

[7] The issues to be determined are:

- (a) Does s 150A of the Act impact on the making of orders regarding the legal costs provision in the settlement agreement?
- (b) If the Authority is able to proceed, should Grande and/or Mr Li be required to pay:
 - (i) interest covering the period the legal costs were outstanding;
 - (ii) penalties for breach of the settlement agreement in not paying the legal costs when required; and
 - (iii) a contribution on costs incurred regarding this application.

The settlement agreement

[8] Clause 4 of the 11 July 2024 settlement agreement stipulates:

The Employer agrees to pay \$3,500 (plus GST) towards the Employee's legal costs within 7 days of a receipt of a tax invoice from his representative.

[9] Clause 5 then provides:

The Employer Director Cang Li agrees to enter a personal guarantee with the Employee to guarantee all and any payments due from this Agreement.

[10] Mr Li signed the agreement on behalf of Grande and on his own behalf.

Delay in payment

[11] On the same day the agreement was signed an email is sent on behalf of Mr Wu's representative to Mr Li. It notes the agreed payment to Mr Wu is to be made to him with his bank details provided. Attached is an invoice to Grande from the organisation Mr Wu's representative is with, payable to that organisation's bank account number.

[12] The invoice is described as being for "Legal fees, as agreed" of \$3,500 plus GST, totalling \$4,025. The due date is recorded as 18 July 2024.

[13] Reminders are sent both before and after the due date. A warning is included that if enforcement is needed additional costs will be sought, along with interest, reimbursement for the filing fees and penalties. Similar messages are sent over following days by email and WeChat as well as in a phone call to Mr Li.

[14] No legal costs payment is received by the time the application was lodged in the Authority.

[15] Payment is made in September 2024.

Section 150A of the Act

[16] The Act specifies:

150A Payment on resolution of problem

- (1) Any payment by one party to another, required by any agreed terms of settlement under section 149(3) or decision under section 150(3), must be paid directly to the other party and not to a representative of that party, and the party receiving the payment may not receive, or agree to receive, payment in any other manner.
- (2) For the purposes of this Act, a payment that does not comply with subsection (1) is to be treated as if payment has not been made.
- (3) Subsection (1) does not –
 - (a) apply if the party to whom the payment is required to be made is receiving or has received legal aid ...; or
 - (b) prevent a payment being made to the other party's solicitor.

Exceptions not applicable

[17] Before considering the application of s 150A(1) I note that the exceptions in s 150(3) do not apply. There has been no indication that Mr Wu is in receipt of legal aid, when there is an obligation to provide such notification. His representative Mins Chang is not a solicitor.

Application of s 150A(1)

[18] Submissions for Mr Wu refer to the economic theory of freedom of contract, emphasising giving parties freedom of choice and freedom from interference.

[19] Be that as it may, Parliament has passed s 150A of the Act and it is part of New Zealand law.

[20] Section 150A imposes a restriction on payments the parties can agree to make and the Authority cannot overlook that. Payments under s 149 agreements cannot be made to a representative unless one of the subsection 3 exceptions applies.¹

¹ *Armstrong v MTS Energy Ltd* [2023] NZERA 72, *KQJ v RXT* [2024] NZERA 281 and *Singh v Kanji Corporation Ltd* [2024] NZERA 470.

[21] Clause 4 of the settlement agreement and the payment made under it are contrary to s 150A of the Act and there is no applicable exception.

No penalty or interest ordered

[22] Settlement agreements play a significant role in New Zealand's dispute resolution regime and very often a failure to action what was agreed will justify a penalty. Given the difficulty here with the implications of s 150A, no penalty is imposed. Similarly no interest is awarded.

Other points

[23] Final submissions for Mr Wu suggest there had been a breach of Mr Li's personal guarantee in clause 5 of the settlement agreement. It was not explicitly stated in communications that there was a call on Mr Li under his personal guarantee to pay the legal costs figure, as distinct from messages to him as Grande director seeking that the company pay the invoice. In any event it could be seen that a payment by Mr Li as a party to the settlement agreement, to another party's representative, is captured by s 150A(1) as well.

[24] I am not inclined to accept an alternative suggestion that \$3,500 plus GST should be paid to Mr Wu. This was not originally sought and its implications have not been fully explored.

Costs

[25] No order for costs is made.

Nicola Craig

Member of the Employment Relations Authority