

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 361  
3351680

BETWEEN                      SHAOBO HUANG  
   Applicant

AND                              OPTIMAL DRAINAGE AND  
   TRAFFIC LIMITED  
   (Previously named OPTIMAL  
   GPR & CCTV DRAIN  
   INSPECTION LIMITED)  
   Respondent

Member of Authority:        Helen van Druten

Representatives:             May Moncur, advocate for the Applicant  
   Xiaoxue Zhang for the Respondent

Investigation Meeting:       On the papers

Submissions received:       17 March 2025 from the Applicant  
   22 April 2025 from the Respondent

Determination:                19 June 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     In January 2024 Mr Shaobo Huang and Ms Xiaoxue Zhang (director) of Optimal Drainage and Traffic Limited (then Optimal GPR & CCTV Drain Inspection Limited) resolved an employment relationship problem through a record of settlement (ROS). A mediator then certified the ROS under s 149 of the Employment Relations Act 2000 (the Act).

[2]     Mr Huang has applied to the Authority for a compliance order because Optimal Drainage and Traffic Limited (ODTL) has not made all payments due in the ROS. Although the ROS included a confidentiality clause, it is necessary for this

determination to refer to details of relevant terms. Mr Huang also seeks a penalty and costs.

### **The Authority's investigation**

[3] In a case management call with the parties on 12 March 2025, the options for hearing this matter were explained and the parties agreed that this matter could be determined on the papers.

[4] 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.

### **Issues**

[5] The issues requiring investigation and determination are whether ODTL has breached the ROS, whether a compliance order should be issued, whether a penalty should be imposed on ODTL and whether costs should be awarded.

### **Background**

[6] The initial employment matter was brought before the Authority in October 2023. The parties subsequently reached a settlement and the ROS was certified by a mediator on 18 January 2024. That certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms were subject to s 148A, s 149(1) and s 149 (3) of the Act, namely that they:

- (a) were final, binding and enforceable; and
- (b) could not be cancelled; and
- (c) could not be brought before the Authority or the court for review or appeal, except for the purposes of enforcing those terms.

[7] Clause 2 of the ROS required ODTL to pay Mr Huang \$5,000.00 pursuant to s 123(1)(c)(i) of the Act. This amount was to be paid by 10 weekly instalments of \$500.00 each with the first payment to be paid on or before 11 March 2024.

[8] Ms Zhang acknowledges ODTL has breached this term of the ROS. She said that an amount specified in clause 3 of the ROS was paid to Mr Huang but accepts \$5,000 is still owing under clause 2.

[9] Ms Zhang said that ODTL is no longer trading (though it remains registered) and with significant debts it does not have the financial resources to pay the remaining monies owing or any penalty that may be awarded by the Authority.

## **Findings**

### *Breach of ROS*

[10] The ROS is a legally binding and enforceable agreement and it is not disputed that ODTL has breached clause 2 of the ROS in failing to make the agreed weekly instalment payments since March 2024.

### *Compliance order to be issued*

[11] Section 137(1)(a)(iii) of the Act gives the Authority power to order compliance where a person has not complied with any terms of settlement signed under s 149 of the Act. Having found the ROS has been breached, a compliance order should be issued to prevent recurrence.

[12] Ms Zhang requested any order provide for payment by instalments. I did consider the option to require payment by instalments but decline to exercise this discretion under s 138(4A) of the Act. While the other payment to Mr Huang was made and this is acknowledged, Ms Zhang has not made any attempt to pay any part of the \$5,000 owing for over 12 months. She already had the opportunity to make payments by instalment and has not done so.

### *Interest*

[13] Mr Huang has not claimed for interest and no interest on the amount owing is awarded.

### *Penalty*

[14] Section 149(4) of the Act provides that a person who breaches an agreed term of settlement is liable to the imposition of a penalty. Mr Huang seeks a \$20,000 penalty

for breach of the ROS. This is the maximum penalty available for a company under s 135(2)(b) of the Act.

[15] I will adjourn the penalty claim to enable ODTL to meet the requirements of this compliance order and to remedy the breach of the agreement with Mr Huang. This decision is based on ODTL's extensive Inland Revenue (IR) debt as evidenced to the Authority and an acknowledgment that Ms Zhang did pay the money owed under clause 3 of the ROS.

[16] The adjournment of this claim should not be seen to encourage non-payment. At the time of settling this matter with Mr Huang, IR correspondence shows that at the time of the mediation with Mr Huang, Ms Zhang would have been aware of the significant company financial debts ODTL owed to IRD and its likely inability to pay him. Should penalties be considered, this will be relevant.

[17] Should the amount owed not be repaid in accordance with the compliance order, Ms Zhang is advised that her steps taken to remedy this breach will be considered in any penalty to claim to determine the quantum of any penalty awarded.

### **Summary**

[18] ODTL has breached the ROS. Pursuant to section 137(2) of the Act, within 28 days of the date of this determination, ODTL must comply with the record of settlement certified on 16 January 2024, by paying Mr Huang \$5,000 into his nominated bank account number.

[19] The penalty claim is adjourned to enable the compliance order to be complied with. If this does not occur, Mr Huang may ask the Authority to determine his penalty claim.

### **Costs**

[20] Mr Huang is entitled to a contribution to his costs as he has been successful. When considering costs, the starting point is the Authority's daily tariff, which is \$4,500 for a one-day investigation meeting.<sup>1</sup> Ms Zhang did not make any submission on costs.

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<sup>1</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1).

[21] As this matter was heard on the papers and the parties have been communicative and responsive with their documentation provided, an award of \$500 is made to Mr Huang towards his advocate costs.

[22] Accordingly, within 28 days of the date of this determination ODTL is also ordered to pay Mr Huang \$500 as a costs contribution and reimburse the Authority application fee of \$71.55.

Helen van Druten  
Member of the Employment Relations Authority

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