

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 398
3355745

BETWEEN	JIAN YANG Applicant
AND	GROOVED LIMITED First Respondent
AND	QINLAN FAN Second Respondent

Member of Authority:	Helen van Druten
Representatives:	Shih Chieh (Mins) Chang, advocate for the Applicant Qinlan Fan for the First and Second Respondent
Investigation Meeting:	On the papers
Submissions received:	2 May 2025 from the Applicant No response from the Respondent
Determination:	4 July 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Jian Yang claims that Grooved Limited and Qinlan Fan (as director) have not complied with a Record of Settlement (ROS) signed by the parties on 14 November 2024 and certified by a mediator under s 149 of the Employment Relations Act 2000 (the Act). Mr Yang also seeks a penalty and costs.

[2] Although the ROS included a confidentiality clause, it is necessary for this determination to refer to details of relevant terms.

The Authority's investigation

[3] In a case management call with the parties on 12 March 2025, the parties agreed that this matter could be determined 'on the papers'. Submissions were received from Mr Yang on 2 May 2025. No response or submissions were received from Grooved Limited or Mr Fan.

[4] Mr Fan's initial statement in reply and concerns raised in the case management call related to alleged unauthorised actions of a recruitment company in China. As confirmed in the directions issued to the parties on 11 April 2025, the compliance order application is separate from any legal action Mr Fan may wish to take regarding the recruitment company.

[5] 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

[6] The issues requiring investigation and determination are:

- (a) whether Grooved Limited breached the ROS;
- (b) whether a compliance order should be issued;
- (c) whether Mr Fan has personal liability for the breach;
- (d) whether a penalty under s 149(4) of the Act should be imposed on Grooved Limited and/or Mr Fan and if so, whether it should be paid to Mr Yang;
- (e) should interest be payable on the outstanding sum; and
- (f) whether costs should be awarded.

Record of Settlement

[7] The initial employment matter was brought before the Authority in November 2024. The parties reached a settlement and the ROS (which was between Mr Yang and Grooved Limited) was certified by a mediator on 14 November 2024. The 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.

[8] Clause 2 of the ROS required Grooved Limited to pay Mr Yang \$6,500.00 pursuant to s 123(1)(c)(i) of the Act. This amount was to be paid by 20 December 2024 into a specified bank account number.

[9] Clause 3 of the ROS required Grooved Limited to pay Mr Yang a contribution to the employee's representative's costs of \$3,500.00 plus GST to WorkFair Limited by 20 December 2024.

[10] Neither amount has been paid. Mr Yang's representative has evidenced presentation of the invoice and repeated attempts to contact Grooved Limited and Mr Fan for payment, along with assistance from the MBIE mediator to recover the payment.

Findings

Breach of ROS

[11] The ROS is a legally binding and enforceable agreement and based on the evidence provided, Grooved Limited has breached clauses 2 and 3 of the ROS by failing to pay the amounts owed by 20 December 2024.

Compliance order to be issued

[12] 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 by compelling Grooved Limited to meet its specific legal obligations as noted above.

[13] In the case management call on 12 March 2025, Mr Fan requested payment by instalments. Mr Yang declined this request. Despite no submission from Mr Fan, I did consider the option to require payment by instalments but decline to exercise this discretion under s 138(4A) of the Act. First, as required under that section, it has not

been established that Grooved Limited's financial position necessitates payment by instalment. Second, neither Grooved Limited nor Mr Fan have attempted to pay any part of the monies owing.

Inclusion of Second and Third Respondent

[14] Mr Yang also brings a claim against Mr Fan as a person involved in breaches of money payable under s 142Y of the Act. That section enables an employee to recover from a person who is not their employer any wages or other money payable to the employee if, *inter alia*, the default is due to a breach of employment standards as defined in s 5 of the Act. Mr Fan signed the ROS for Grooved Limited on 14 November 2024 and ceased being a director of the company on 1 February 2025.

[15] An amended statement of problem was filed by Mr Yang's representative on 15 April 2025. This included Guangjun Fan as a Third Respondent. According to the Companies Register, Guangjun Fan was appointed as a director of Grooved Limited on 23 October 2024.

[16] This breach by Grooved Limited is related to matters agreed in a ROS, not a breach of employment standards, so neither Mr Fan nor Guangjun Fan can be considered liable as a respondent. This approach was affirmed in *Werner v PC & KL Black Ltd* [2018] NZERA 35 where the Authority refused leave to join the directors to the proceedings in order to enforce a ROS.

Interest

[17] Mr Yang seeks interest on the overdue settlement monies. The Authority has the power to award interest under clause 11 of the Second Schedule of the Act. Interest is to reimburse someone for the loss of use of monies to which there is an established entitlement.

[18] Mr Yang was entitled to receive this money so it is appropriate to make an award for interest. The amount due to Mr Yang by 20 December 2024 was \$6,500. This interest is payable in accordance with schedule 2 of the Interest on Money Claims Act

2016 and is calculated using the calculation tool available on the Ministry of Justice website.¹ Interest is to be calculated from 20 December 2024.

[19] Accordingly, Grooved Limited is ordered to pay interest of \$199.83 by 31 July 2025 to Mr Yang. If unpaid by that date, the interest will continue to accrue in accordance with the Interest on Money Claims Act 2016.

[20] Interest is not awarded on money owed as legal costs.

Penalty

[21] 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 Yang seeks a \$20,000 penalty for breach of the ROS by Grooved Limited and \$10,000 by Mr Fan for aiding and abetting the breach of the ROS. This is the maximum penalty available for a company and a person respectively under ss 135(2)(a) and (b) of the Act. Mr Yang further says any penalties awarded or portion thereof should be paid to him but does not specify any reason for doing so.

[22] The imposition of a penalty is discretionary and is generally imposed for the purpose of punishment as well as deterrence.

[23] Any breach of a ROS not only undermines the integrity and enforceability of such agreements but also the confidence that parties may have towards their finality and binding nature.

[24] Mr Fan, as Director of Grooved Limited, was aware of the amount owing. In a text message to Ms Chang (translated from Mandarin to English by Ms Chang and not disputed by Mr Fan) on 24 December 2024, he gave reasons for the delay and assured payment:

Sorry, I just received your message. I've been quite busy at the end of the year. I asked the accountant to transfer the money, but they might not have done it. I flew yesterday and am in China today. I just tried to use online banking, but due to security issues with the banking system, I can't transfer amounts over four digits. I can only transfer it to you when I return to New Zealand on the 13th. I sincerely apologize...

¹ www.justice.govt.nz/fines/civil-debt-interest-calculator

Yes, my sincerest apologies. The accountant also returned to China last Saturday, so we can only wait until I return. I confirm that I will be back on the 13th of next month, and the first thing I will do is pay the money to you. My deepest apologies!

[25] Section 133A of the Act sets out a list of non-exhaustible factors that I must consider in setting any penalty. Those factors are further elaborated upon in case law. It is not in dispute that Grooved Limited is responsible for breaching the ROS and that it has had the benefit of the settlement monies (of which Mr Yang has been deprived) over an extended period.

[26] There is no basis on which to reasonably conclude that the breaches of the ROS were inadvertent, minor or technical although it is acknowledged that remitting monies from China is not straight forward. In his text of 24 December 2024, Mr Fan had assured payment on 13 January 2025 yet there was no attempt to pay any amount owed.

[27] As no response was received from Grooved Limited, there is no information to suggest that the business is facing financial difficulties or is unable to pay the outstanding sum. Mr Yang has been put to considerable inconvenience trying to recover the amounts owing and incurred additional advocate costs. Mr Fan gave Mr Yang false assurances of payment and in recent times been non-communicative with him and with the Authority.

[28] Having considered all relevant factors in s 133A of the Act, Grooved Limited is liable for a penalty of \$1,500 for failure to pay monies due under a ROS which is proportionate to the seriousness of the breach and harm caused. Pursuant to s 136(2) of the Act, half of this amount is to be paid to Mr Yang (\$750) with the balance to the Crown.

Summary

[29] Grooved Limited has breached the ROS. Pursuant to section 137(2) of the Act, within 28 days of the date of this determination, Grooved Limited must comply with the ROS certified on 14 November 2024, by:

- (a) paying Jian Yang \$6,500 into his nominated bank account number; and
- (b) Paying the WorkFair Limited invoice submitted on 14 November 2024 for \$3,500 plus GST.

[30] Grooved Limited is also ordered to pay Jian Yang:

- (a) Reimbursement of the Authority application fee of \$71.55;
- (b) Interest on the amount owed to Mr Yang payable in accordance with schedule 2 of the Interest on Money Claims Act 2016 (\$199.83 as at 31 July 2025); and
- (c) \$1,500 in penalty with \$750 to be paid to Mr Yang and \$750 to be paid to the Crown.

Costs

[31] WorkFair Limited claimed an additional sum for legal costs related to pursuing payment. This has not been included in this determination. At Ms Chang's request, costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Yang may lodge, and then should serve, a memorandum on costs within 21 days of the date of this determination. From the date of service of that memorandum Grooved Limited will then have 14 days to lodge any reply memorandum.

[32] On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted. The parties can anticipate the Authority will determine costs, if asked to do so, on its usual "daily tariff" basis unless circumstances or factors, require an adjustment.²

Helen van Druten
Member of the Employment Relations Authority

²For further information about the factors considered in assessing costs see:
<http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1>