

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 414  
3268341

BETWEEN JASWINDER SETHI, SUNIL  
NAIR AND SONIA SETHI  
Applicants

AND VISHAL BAINS  
First Respondent

AND SUNNY SEHGAL  
Second Respondent

Member of Authority: Sarah Blick

Representatives: Dee Sethi, advocate for the applicants  
John Wood, advocate for the respondents

Investigation Meeting: 2 April 2025

Submissions and information received: 14 and 26 May 2025 from the applicants  
4 and 6 April 2025, 21 May 2025 from the respondents

Determination: 15 July 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] SRP Holdings 2015 Limited (SRP) entered into a record of settlement (ROS) with former employee Vishal Bains in September 2021. The applicants Jaswinder Sethi, Sunil Nair and Sonia Sethi are former shareholders of SRP. SRP sold two businesses to a company, referred to as BTL in this determination. BTL later filed proceedings in the High Court against the applicants, claiming damages relating to representations of the past profitability of the businesses.

[2] A version of the ROS, signed only by Mr Bains, found its way into a list of relevant documents disclosed to the applicants during a disclosure process in the High Court proceeding. The applicants claim Mr Bains breached the confidentiality term in

the ROS by sharing a copy of the ROS and/or failing to keep it confidential between the parties. They say Sunny Sehgal, Mr Bains' advocate at the time the ROS was agreed, failed to provide Mr Bains with a copy of the signed, certified copy of the ROS, and to ensure Mr Bains fully understood the enforceability of the confidentiality clause. The applicants allege Mr Sehgal contributed to or facilitated Mr Bains' breach by such failures.

[3] The applicants seek an acknowledgment of the breach, an official apology, compensation and damages for losses incurred by them due to the breach. At the investigation meeting the applicants clarified that they wished to recover the amount of money paid by them/SRP pursuant to the ROS. They further seek a compliance order preventing further non-compliance with the confidentiality term, and legal costs.

[4] The respondents deny any wrongdoing. Mr Sehgal categorically denies that he disclosed a copy of the ROS as alleged, and is careful to ensure his clients understand their legal responsibilities when ROS are agreed.

### **The Authority's process**

[5] A joint witness statement was provided for the applicants. At the Authority's request, affidavits from counsel from a law firm which acted as instructing solicitor for another company in the High Court proceeding were received. That company had been named as fifth defendant. Witness statements were received for the respondents.

[6] Mr Sethi and Mr Nair attended the investigation meeting in person, along with Mr Sehgal. Mr Bains attended by audio visual link with prior leave of the Authority. The witnesses in attendance gave evidence under oath or affirmation.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter. It has not recorded all evidence and submissions received, which have been considered.

### **The issues**

[8] The issues requiring investigation and determination are:

- (a) Do the applicants have standing to pursue a claim for orders relating to alleged breaches of the terms of an ROS?

(b) If so, did the respondents breach the confidentiality term of the ROS?

(c) If so, what orders may, and should be made, against the respondents?

## **Background**

### *Mr Bains raises problem and lodges it in Authority*

[9] Mr Bains resigned from his employment with SRP in August 2021, and engaged Mr Sehgal in pursuing an employment relationship problem. In early September 2021 Mr Bains' lodged a statement of problem in the Authority, naming SRP and each of the applicants as respondents.

[10] I understand the statement of problem was served on the applicants, and shortly thereafter as a result of negotiations, Mr Sehgal drafted terms of settlement in the form of an ROS. Mr Sehgal has confirmed the parties did not attend mediation, which the applicants do not dispute. An ROS was certified, payments were made in accordance with the ROS, and Mr Bains' application was withdrawn from the Authority.

### *SRP sold businesses, was liquidated and removed from the Companies Register*

[11] A judgment of the High Court confirms that in September 2021, BTL purchased two hospitality businesses from SRP. The Court confirmed the applicants (as defendants) were shareholders of SRP and covenanted its performance of the agreement for sale and purchase. Further, the fifth defendant was nominated as the vendor for a loan to BTL.

[12] SRP was subsequently placed into liquidation on 7 October 2022 and removed from the Companies Register on 3 August 2023.

### *Applicants lodge statement of problem*

[13] In December 2023 the applicants lodged a statement of problem in the Authority seeking the orders identified above. They provided a copy of the ROS, signed by the parties and dated 14 September 2021 (the certified ROS). In the certified ROS, SRP is named as "the first respondent" and the applicants as the second to third "respondents". At the top of the first page of the certified ROS, it says the ROS is "Without Prejudice until signed by a Mediator".

[14] Clause 9 of the certified ROS provided that the terms of the settlement and all matters discussed in reaching this settlement shall remain, so far as the law allows, confidential to the parties.

[15] Along with a copy of the certified ROS, the applicants lodged with the Authority a copy of the first page only of the certified ROS, which identifies a signature software app provider and records the statement “This document is now complete”.

[16] An undated letter was also included, from a person identified as a tax agent for BTL, which identified four employees as having not been paid correctly by SRP. One of those employees is Mr Bains. It says information provided by BTL’s director includes that Mr Bains has “filed a case with the employment relations and also got the compensation for underpayment as per the document provided by client at Annexure - 4”. No document marked “Annexure -4” was included with the document attached.

[17] The parties attempted mediation in around February 2024, but this did not resolve matters.

*Affidavit evidence obtained*

[18] Following allocation to a member, the Authority asked the applicants’ representative to make arrangements for affidavit evidence to be provided said to relate to Mr Bains being the source of a copy of the ROS being provided to BTL.

[19] The instructing solicitor for the fifth defendant in the High Court proceeding ultimately provided three affidavits to the Authority, at its request.

[20] The first affidavit stated BTL provided a “discovery affidavit” in the High Court proceeding which listed a document as “V Bains Record of settlement” with BTL’s director’s initials listed by or on it. The first affidavit then said the ROS was provided by BTL via a Dropbox link as Document 090 “mentioned as being supplied by Vishal Bains to Plaintiff”.

[21] The second affidavit added more detail, by request from the Authority. It stated the instructing solicitor was not prepared to disclose any documents from the High Court proceeding, due to concerns around legal privilege, litigation privilege and confidentiality. The second affidavit provided the following information:

- (a) On 9 October 2023, a barrister representing BTL filed an affidavit of documents on behalf of BTL in the High Court proceeding.
- (b) On 9 April 2024, the instructing solicitor received an email from the fifth defendant's barrister which included a Dropbox link of the documents originally sent to the law firm.
- (c) After reviewing BTL's affidavit of documents more "strictly", a document identified as "DOC ID 090" was listed as the "V Bains Record of Settlement", "which was provided by Mr Vishal Bains as I understand was specified as an "undated".
- (d) To the best of his knowledge and memory, the instructing solicitor had not seen a fully signed copy of the "V Bains Record of Settlement" and could not confirm it exists.

[22] A third brief affidavit annexed an exhibit - a forwarded email from BTL's barrister to the fifth defendant's barrister dated 20 October 2023. The email included the Dropbox link for access to BTL's documents, by way of discovery. An email dated 9 April 2024 from the fifth defendant's barrister stated document 090 was no longer accessible.

*Applicants' evidence at investigation meeting*

[23] At the investigation meeting Mr Nair gave evidence that Mr Bains was listed as a witness in the High Court proceeding, and a witness summons was issued in relation to him. The Authority was not provided with any documentary confirming this.

[24] At the investigation meeting, the applicants provided a two-page document entitled "Plaintiffs Initial Discovery" apparently lodged by BTL in the High Court proceeding. It is dated 8 November 2022 and lists Mr Bains as the "author" of a "Written notice of grievance" dated 24 July 2021. It does not list the ROS as one of the discovery documents.

*Mr Sehgal and Mr Bains' evidence*

[25] Mr Sehgal says he sent a final version of the ROS to Mr Bains for review and signature by email in September 2021. Mr Bains says he reviewed the ROS, downloaded a required signature software app, signed it electronically using that app, and sent it back to Mr Sehgal. Mr Bains says he saved a copy on his laptop while also retaining the email.

[26] Upon reviewing his sent items in his email account, Mr Sehgal reports discovering that he forgot to send a copy of the certified ROS to Mr Bains. Mr Sehgal gave evidence that he has a copy of the signed and unsigned ROS on his laptop. He says the laptop is password protected, and it was generally kept in his former office or at his home. He says he has not allowed anyone access to the laptop for the purpose of viewing or obtaining any copy of the ROS. He says he never had a physical copy of the ROS.

[27] Mr Sehgal further reports having had no involvement with BTL, its director, or any knowledge of the instructing solicitor of the fifth defendant. He says any assertion that he disclosed confidential information to BTL or any other entity is entirely unfounded and without merit. He says he ensured that all aspects of the ROS, including its confidentiality provisions, were understood by Mr Bains and adhered to. He says as an advocate specialising in employment law and representing vulnerable migrants within the community, he fully understands the importance of confidentiality clauses in settlement agreements. Such clauses, he says, are essential for protecting the interests of all parties involved and maintaining the trust and integrity of legal resolutions.

[28] Mr Bains also says he never received a signed and certified copy of the ROS. Mr Bains says he did not print, share, or allow anyone else to copy the version of the ROS document. Once he received the agreed payment, he considered the matter closed.

[29] Mr Bains' evidence is that he acknowledged the ROS he signed included a confidentiality clause prohibiting the disclosure of confidential information related to the settlement. However, he asserts that he has not knowingly breached that clause by disclosing any confidential information in violation of the ROS.

[30] Mr Bains denies being involved in the High Court proceedings as a witness. Although he acknowledged in oral evidence that he was asked to be a witness in an Authority matter involving another SRP employee, this did not eventuate. In any event, Mr Bains denies any knowledge or intent to breach the ROS confidentiality term.

## **Discussion**

### *Authority's jurisdiction in relation to remedies*

[31] Setting aside the question of whether the applicants' have standing to bring a claim for now, I make the following observations in relation to the Authority's jurisdiction as it relates to this case.

[32] Where parties have concluded terms of settlement which are enforceable under s 149(3), the only means of enforcement are those provided for in s 151 of the Act.<sup>1</sup> Where the term of the agreement found to have been breached does not require the payment of money, the only remedy available is an order of compliance with the term in question. No other remedies are permitted under s 151. Because of this, Authority has no jurisdiction to provide other remedies such as damages or compensation as sought by the applicants. Their claims for such remedies must be declined.

[33] A party may also (or alternatively) bring a penalty claim under s 149(4) of the Act against a person who breaches an agreed term of settlement. The applicants have not brought a penalty claim against the respondents, and I am not at liberty to impose a penalty in the absence of it being sought. Such a claim would be out of time in any event.

[34] The only remedy available to the applicants, therefore, in the event of a finding of a breach by the respondents, is a compliance order under s 137(2) of the Act, for the purpose of preventing further non-observance or non-compliance with the ROS. The burden is on the applicants to establish the material facts on which the application for a compliance order is based to a standard of probability, that is, is it more likely than not that the respondents undertook the alleged actions.<sup>2</sup>

#### *Applicants' standing to pursue claim*

[35] It is not in dispute that the applicants were directly involved in the settlement negotiations and the signing of the ROS with Mr Bains. The applicants were named parties to the certified ROS under s 149 of the Act, having been named as respondents in Mr Bains' application to the Authority. The applicants refer to the resulting harm of disclosure of terms of the ROS, which I infer to be financial and other harm associated with defending the High Court proceeding. On the limited information before me, they appear to have standing to take action against the respondents under s 137(4) of the Act.

#### *Finding in relation to Mr Bains*

[36] The applicants state only a small group had access to the ROS - the applicants, their counsel at the time, Mr Bains, Mr Sehgal, and the Mediation Service - no other

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<sup>1</sup> *South Tranz Ltd v Strait Freight Ltd* [2007] ERNZ 704 at [38].

<sup>2</sup> *New Zealand (with exceptions) Shipwrights etc Union v Te Moana* [1989] 1 ERNZ (LC), *United Food & Chemical Workers Union of NZ v Talley* [1992] 1 ERNZ 756 (LC).

individuals had authorised access. They further say the use of the ROS as evidence, or reference to it, in BTL's High Court proceeding clearly demonstrates that the information, which was supposed to remain confidential, was disclosed to a third party. It also refers to Mr Bains' involvement as a witness strongly suggests he has breached the confidentiality clause.

[37] There is no direct evidence before the Authority of when, how or to whom Mr Bains is alleged to have provided a copy of the unsigned ROS in breach of the certified ROS. This is despite the applicants being given ample time and opportunity to produce direct evidence establishing the breach.

[38] The timing of the sharing of the ROS document would have been relevant, but has not been established. If it was shared after it was certified by a mediator, it would likely have been enforceable contained terms of settlement which became confidential to the parties. If it was shared prior to being certified by a mediator, while a without prejudice document, it was not a s 149 document capable of being enforced under the Act. There is insufficient evidence establishing when the ROS was shared by Mr Bains, if it was.

[39] The Authority's requests for affidavit evidence addressing the claim Mr Bains was the source of the ROS disclosure has also not resulted in any direct evidence establishing Mr Bains' involvement. The instructing solicitor's references to Mr Bains as the source are based on an "understanding", rather than direct knowledge.

[40] The "discovery affidavit" in the High Court matter has also not been provided, and the initial disclosure document dated 8 November 2022 does not reference the ROS. There was also no supporting evidence that Mr Bains was listed as a witness in the High Court proceedings.

[41] The High Court matter has been resolved, which has made the applicants either unable or unwilling to produce evidence or witnesses that sufficiently support claims of a breach. Given this, the Authority cannot be satisfied on the balance of probabilities that Mr Bains has acted in breach of the obligation to keep the terms of the settlement and all matters discussed in reaching the settlement confidential to the parties. Although in oral evidence Mr Singh and Mr Nair orally assured me that the source of the ROS being provided to BTL could not have been a representative of SRP, I cannot discount that possibility.

### *Finding in relation to Mr Sehgal*

[42] The applicants appear to acknowledge there is no direct evidence that Mr Sehgal shared a copy of the ROS to BTL or any other person beyond the small group identified by them. However, the applicants say Mr Sehgal's role in this matter cannot be overlooked as he was instrumental in the agreement process and is presumed to be aware of the obligations it entails as Mr Bains' representative.

[43] There is clearly no direct evidence that Mr Sehgal shared any version of the ROS, in breach of its terms.

[44] I agree that a responsible representative can be expected to advise their client of applicable confidentiality terms agreed in terms of settlement under s 149 of the Act. However, it is not clear that an omission to do so would constitute non-compliance or non-observance with such a term enforceable by way of compliance order. In any event, Mr Sehgal asserts he advised Mr Bains regarding his obligation to keep the terms of the ROS confidential. There is no evidence that he did not do so.

### **Outcome**

[45] The applicants' claims are not established to the necessary evidential standard sufficient for a compliance order to be issued. No orders are made.

[46] It is of concern that a version of the ROS containing terms confidential to the parties was disclosed in the High Court proceeding. The Authority reminds Mr Bains that the terms of the ROS are still binding on him, as they are on the applicants, as the remaining parties to it.

### **Costs**

[47] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[48] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the respondents may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum the applicants will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[49] 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 upwards or downwards.<sup>3</sup>

Sarah Blick  
Member of the Employment Relations Authority

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<sup>3</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)