IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2025] NZERA 475
3346020

	BETWEEN	CINTINA MIKI Applicant
	AND	NGĀTI MĀKINO IWI AUTHORITY Respondent

Member of Authority:	Sarah Blick
Representatives:	Renika Siciliano and Cree Ratapu, counsel for the applicant Alex Hope, counsel for the respondent
Investigation Meeting:	On the papers
Submissions and information received:	25 March, 17 April and 1 August 2025 from the applicant 15 and 29 April, 1 May and 31 July 2025 from the respondent
Determination:	5 August 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Cintina Miki says her former employer Ngāti Mākino Iwi Authority (NMIA) has failed to comply with terms in a record of settlement (ROS) the parties entered. While she initially sought a compliance order as a remedy, now only the remedies of interest, penalties and legal costs as special damages are sought.

[2] In making final payment of wages to Ms Miki, NMIA deducted sick leave it says was taken in advance of her entitlement. While NMIA has since paid her the amount deducted, Ms Miki says it was unlawfully deducted and a penalty should be imposed on NMIA in relation to it.

[3] NMIA admits it was late in complying with some terms of the ROS, and did not ensure some terms were met. It has provided explanations for these matters as well as the deduction

of sick leave. It admits liability to pay interest and a penalty for some of the breaches, but not special damages.

[4] Although the ROS included a confidentiality clause, it was necessary for this determination to refer to some details of those terms to the extent necessary.

The Authority's process

[5] This matter has been determined on the papers by agreement with the parties.

[6] The Authority has received a witness statement each from Ms Miki and NMIA's trustee Chairperson, Awhi Awhimate. Submissions and memoranda were received from the parties. Ms Miki raised an issue about the relevance of certain content within Mr Awhimate's witness statement.

[7] It came to the Authority's attention through NMIA's submissions that although NMIA is a post settlement governance entity (PSGE), it does not hold status as an entity other than as an unincorporated trust with five trustees. As the identity of the employer was relevant for the purposes of assessing penalties, the Authority has now received comment from the parties on whether the employer has been correctly named, and the maximum penalty available per breach. The parties acknowledged the identity of the employer as being a potential issue, but were in agreement that the maximum penalty available per breach should be $10,000.

[8] The Authority has pragmatically accepted NMIA was Ms Miki's employer, there being authority that an employer need not necessarily be a separate legal entity.[1] NMIA is named as Ms Miki's employer in her employment agreement and the ROS. She has relied on NMIA as having the ability to take on the legal obligations associated and named it in her application in the Authority. While NMIA's status could potentially give rise to enforcement issues, I anticipate that will not be an issue Ms Miki will need to contend with in the circumstances. I have also accepted the parties' position on the maximum penalties available.

[9] 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.[2]

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[1] *Pilgrim v Attorney-General (No 2)* [2023] NZEmpC 227, [2023] ERNZ 1020.
[2] As permitted by section 174E of the Employment Relations Act 2000.

The issues

[10] The following are the issues for investigation and determination:

(a) Should a penalty or penalties be imposed for breaches of the ROS, namely for non-compliance with the timeframes in the ROS in relation to:
  (i) paying an agreed compensation amount to Ms Miki;
  (ii) providing a written reference to Ms Miki.
(b) Did NMIA make an unauthorised/unlawful deduction from Ms Miki's final pay in breach of s 5 of the Wages Protection Act 1983 (WPA) and if so should a penalty be imposed?
(c) Should interest be awarded on the deduction amount, if it was unauthorised/unlawful?
(d) Should either party contribute to the costs of representation of the other party, and/or is Ms Miki entitled to seek costs as special damages?

[11] While not included as a claim in Ms Miki's amended statement of problem, her witness statement claimed NMIA did not comply with other ROS terms, by failing to:

(a) take steps to ensure she retained her work mobile phone number;
(b) communicate by email her resignation to NMIA kaimahi and verbally to those present at NMIA's annual general meeting (AGM) regarding her service.

[12] Both parties have addressed these breaches in their evidence and submissions, such that I am comfortable they should be included as part of Ms Miki's claims.

Background

[13] NMIA is a PSGE established to receive, manage and administer Treaty settlement assets on behalf of and for the benefit of present and future iwi members. Ms Miki was employed by NMIA as its office manager.

[14] An employment relationship problem arose and on 12 November 2024, the parties signed the ROS which ended the parties' employment relationship, with Ms Miki resigning.

NMIA deducts monies from final pay - deduction

[15] Clause 18 of Ms Miki's employment agreement addressed deductions, stating NMIA would not make any deduction from her wages without first consulting her.

[16] Ms Miki says she took leave approved by Mr Awhimate on behalf of NMIA's Board of trustees (the Board), which related to concerns raised by Ms Miki regarding her employment situation. She says while the Board may have recorded the leave as sick leave taken in advance, she says there was no agreement that she would repay it. Ms Miki refers to a discussion with Mr Awhimate on the matter, and that she understood this would be dealt with and that he would "sort the leave".

[17] Ms Miki says the primary concern which gave rise to her Authority application was an unauthorised deduction NMIA made from her final pay on 15 November 2024, of $2,769.23 (before tax), for sick leave taken in advance. After mediation the Board did not contact Ms Miki prior to making the proposed deduction. Ms Miki says she did not provide consent for any deduction of wages, either before or after her final pay.

[18] When the deduction was identified, Ms Miki's counsel raised this with NMIA on 15 November 2024. Her counsel advised it was deducted without her agreement, and her full pay should be paid promptly. A follow up email was sent on 21 November 2024 as no response was received. The response from NMIA's counsel on 22 November 2024 was that Ms Miki had asked for sick leave in advance with the clear implication it would have to be repaid.

[19] A statement of problem was lodged with the Authority on 12 December 2024.

[20] NMIA now accepts the deduction from Ms Miki's final pay should have been notified to her. It says the situation was rectified when NMIA made a pragmatic decision to refund the deduction, although it believed it had good grounds to make the deduction. It says the Board agreed Ms Miki could have sick leave in advance and maintains it was always understood that the leave would be repaid to NMIA. On 20 December 2024 NMIA made payment to Ms Miki of $2,064.99 (the deducted amount after tax).

Breaches of ROS

[21] At clause 4 of the ROS the parties agreed NMIA would communicate Ms Miki's resignation to NMIA kaimahi by email by Mr Awhimate, with an acknowledgement of her

positive service and best wishes. Mr Awhimate was also to briefly communicate that acknowledgment verbally at an upcoming NMIA annual general meeting (AGM). Mr Awhimate acknowledges no email was sent but that he advised office kaimahi verbally and made an announcement at the Board's AGM. Ms Miki says she has spoken to "multiple" kaimahi who confirmed there was no acknowledgment of her service at the AGM.

[22] At clause 5, NMIA agreed to pay a compensation amount to Ms Miki within 14 days of the date of the ROS. This amount was due to be paid by 26 November 2024. Ms Miki contacted NMIA on 27 November 2024 to request payment, as it had not been received. The payment was made that day (a day later than it should have been).

[23] Clause 6 of the ROS related to the retention by Ms Miki of her work mobile phone and number. Ms Miki says on 21 January 2025 she noticed her mobile phone had not received any calls and she could not make calls. She contacted the relevant provider and was advised her number had been disconnected and it was not able to be clawed back, having not been reallocated at the time of disconnection. It is common ground that NMIA did not contact her about the process of relocating her phone number. This has left Ms Miki without her mobile phone number which she has used for a number of years during her employment.

[24] At clause 9, NMIA agreed to provide a positive written reference from Mr Awhimate within 14 days of the date of the ROS. NMIA did not communicate issues regarding the provision of this reference to Ms Miki. As at the date Ms Miki's Authority application was lodged on 14 December 2024, NMIA had not made contact with her regarding the written reference.

[25] NMIA says it provided a draft reference to Ms Miki on 20 January 2025, for her to comment on, which she did. Due to Mr Awhimate needing to attend a tangihanga of a close family member, he says there was a delay in him signing the finalised reference which incorporated her comment. He says the signed reference was provided on 14 February 2025.

[26] NMIA says Ms Miki did not raise an issue around its compliance with clause 4 (communication to kaimahi) and clause 6 (retention of mobile number) until 25 March 2025, when her witness statement was lodged. Ms Miki has not disputed that.

Breach analysis

[27] Section 5 of the WPA permits an employer to make lawful deductions from a worker's wages only with the worker's written consent (including consent in a general deductions clause in the employment agreement) or written request. An employer must consult the worker before making a specific deduction under a general deductions clause. NMIA has accepted it has breached s 5 of the WPA by failing to consult with Ms Miki prior to making the deduction on 15 November 2024.

[28] NMIA has accepted it has breached clauses 4, 5, 6, and 9 of the ROS. I accept breaches of these clauses is clearly established on the evidence presented. However, I make no finding on whether an acknowledgment of Ms Miki's service was given at the AGM, in light of the disputed but untested evidence of the witnesses on that point.

Interest

[29] NMIA agrees to pay interest on the deducted payment. Although a nominal amount, NMIA will be ordered to pay interest on the deducted amount of $2,064.99 between the date of deduction (15 November 2024) and the date it was paid (20 December 2024), using the civil debt interest calculator.

Penalty assessment

[30] The law in respect to penalty quantification is well established given the content of s 133A of the Act and cases such as *Borsboom (Labour Inspector) v Preet PVT Ltd and Warrington Discount Tobacco Ltd*, *A Labour Inspector v Prabh* and *A Labour Inspector v Daleson Investment Ltd*.[3] My penalty considerations are discussed below.

Number, nature and maximum penalty available

[31] There are five established breaches; one breach of s 5 of the WPA and four breaches of the ROS under s 149 of the Act. An employer who fails to comply with any provisions of the WPA is liable to a penalty under s 13 of that Act. Any person who breaches an agreed term of settlement is liable to a penalty under s 149(4) of the Act.

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[3] *Borsboom v Preet PVT Ltd* [2016] NZEmpC 143; *A Labour Inspector v Prabh Ltd* [2018] NZEmpC 110; *A Labour Inspector v Daleson Investment Ltd* [2019] NZEmpC 12; *Nicholson v Ford*, [2018] NZEmpC 132.

[32] As previously accepted, I consider the maximum penalty for each of the breaches is $10,000.

[33] NMIA says certain breaches of the ROS should be globalised. I disagree. It is not appropriate to globalise the breaches as each were separate and distinct. The maximum available penalties are therefore $50,000.

Object of the Act

[34] Relevant objects of the Act are the recognition of the inherent inequality of power in employment relationships; the promotion of mediation as the primary problem-solving mechanism and the desirability of reducing the need for judicial intervention. By failing to comply with the negotiated ROS, as an employer NMIA demonstrated an absent-minded disregard for these objects of the Act.

Nature and extent of the breaches

[35] The breach of the WPA was a one-off breach. NMIA did not advise Ms Miki that the money was being deducted. The unauthorised deduction ran contrary to the understanding between the parties in reaching a full and final resolution at mediation on 12 November 2024. NMIA says in order to resolve the issue it made a pragmatic decision to pay the $2,064.99 to Ms Miki, and now acknowledges its failure to consult with Ms Miki was a breach of the WPA. The failure to consult also breached an express clause in the parties' employment agreement, which NMIA ought to have complied with.

[36] There were four failures to comply with agreed terms of the ROS.

Whether breaches intentional, inadvertent, or negligent

[37] Mr Awhimate explains that he is retired, lives a significant distance away from the NMIA office, and that he and other Board members are paid a small attendance fee (rather than a salary). Mr Awhimate was left trying to sort out compliance with the ROS without office support, keeping actioning of the matter to himself to protect privacy interests. Mr Awhimate says due to a heavy workload and the personal issues he faced at the time, he overlooked matters of compliance with it.

[38] I take into consideration the circumstances and pressures Mr Awhimate faced, resulting in him omitting to ensure parts of the ROS were complied with. The breaches were either inadvertent or negligent, or both.

Nature and extent of any loss or damage

[39] Ms Miki suffered loss of money, albeit for a short or limited time. In relation to the compensation payment, Ms Miki accepts, given the short delay in payment, this breach on its own had minimal effect. Placed in context, however, she says it was part of a greater disruption to the state of ea

[40] reached between the parties at mediation and through the resulting ROS.

[41] The written reference ultimately was provided two months late. Ms Miki says the delay in providing a written reference made her feel the Board had nothing positive to say about her and that the delay was intentional because of the mediation process and potentially as Ms Miki was trying to recover the amount of the unauthorised deduction from the Board. She says the lack of reference and uncertainty around the Board's view of her made it difficult for her to seek work as she was unable to provide a reference from her most recent employer.

[42] I accept the loss of her phone number caused Ms Miki inconvenience. Although I acknowledge the wording of clause 6 of the ROS was silent as to who will carry out the work required to transfer the phone number, NMIA was the employer and account holder and should have taken the steps required to ensure Ms Miki kept the number.

[43] In addition, Ms Miki was deprived of one of the benefits of settlement, namely that settlement should have brought an end to the stress and costs of legal proceedings. Obviously, this did not occur due to NMIA's defaults. Ms Miki has described how going through employment issues has put strain on her mental and physical wellbeing, and impacted her sense of belonging to her iwi. She says waiting for the agreed compensation, deduction payment, the lack of acknowledgement of her service, and the financial and emotional strain left her feeling dismissed and disrespected.

Compensation or other steps in mitigation

[44] NMIA rectified the breaches involving payment of monies within one day (compensation) and around six weeks (deduction).

[45] NMIA says it attempted to negotiate a settlement with Ms Miki regarding the deduction from her final wages, which appears to be a reference to a proposal that she repay the sick leave taken as a debt, by instalment. It says Ms Miki ignored its offer and then lodged an application in the Authority.

[46] When he was reminded about Ms Miki's written reference, Mr Awhimate says he sought to mitigate that breach by offering Ms Miki the opportunity to contribute significantly to her own reference. NMIA says it went beyond what it had agreed to provide in that regard, resulting in a more relevant document. Mr Awhimate says he emailed an apology to Ms Miki regarding the lateness of her reference.

[47] The breach relating to Ms Miki keeping her phone number was incapable of being rectified by the time Ms Miki realised that clause had not been actioned by NMIA.

[48] NMIA did not comply with the agreed mode of advising other kaimahi about Ms Miki's departure, but appears to have done so in another way. It says this was mitigated by Mr Awhimate advising office kaimahi verbally.

[49] NMIA says these latter two matters were not brought to its attention in a timely way. While I acknowledge Ms Miki could reasonably have brought these matters to its attention earlier, NMIA had responsibility to ensure agreed terms it had a part in actioning were met. I accept some mitigation is established in relation to several of the breaches.

Circumstances of the breach, including the applicant's vulnerability

[50] The Authority has not identified any discernible vulnerability on Ms Miki's part, but acknowledges the position of power NMIA held within the employment relationship and within the iwi when she was trying to enforce the ROS.

Any similar conduct

[51] There is no evidence to suggest NMIA has engaged in similar conduct in the past.

Deterrence

[52] Mr Awhimate says the Board has learned from the situation and it is unlikely to happen again. He says he genuinely regrets what has happened. While there may not be a need for

specific deterrence, there is a need for general deterrence as there is an obvious public interest in having employers abide by settlement agreements in a responsible and timely way.

Degree of culpability

[53] I have already had regard to this factor in considering the seriousness of the breaches and the nature and extent of NMIA's involvement in it.

Consistency

[54] I assess the present case as being at the low-moderate end, taking into account the number of the breaches of the ROS and the compounding effect they had on Ms Miki. The late compensation breach and the failure to email kaimahi breaches warrant lesser penalties of $500 each. The other breaches warrant $2,000 penalties. This totals $7,000.

Ability to pay

[55] NMIA says that although it has the resources to pay penalties, those resources belong to the Ngāti Mākino iwi and not to the NMIA Board who have not benefited in any way by the breaches. I acknowledge this point, but do not consider reduction in penalties is appropriate.

Proportionality

[56] Taking all the above matters into account, a penalty of $7,000 is proportional and warranted.

Portion of penalty payable to Ms Miki

[57] Under s 136(2) of the Act the Authority may direct that all or some of the penalties should be paid to Ms Miki. She requests that I make such an order. In all the circumstances, I agree a portion should be paid to Ms Miki, in recognition of the further actions she was required to take to secure nothing more than what was agreed to. I direct that $6,000 of the penalty is paid to Ms Miki, and $1,000 to the Crown account.

Special damages

[58] Ms Miki is seeking special damages to cover her full legal costs incurred in having to enforce the ROS. Ms Miki says taking legal action in respect of these matters is not something she has chosen to do lightly. She says had there been meaningful engagement from the Board, acceptance of breaches or prompt remedy for any missed payments/timeframes, things would

not have proceeded in this way. Ms Miki says she had to chase the Board at every turn to receive her legal entitlements and to restore any sense of ea between the parties which was reached at mediation. Accordingly, special damages are sought.

[59] Although NMIA clearly bungled compliance with its obligations under the ROS, I do not consider its actions (or rather, inactions) rise to the level that would justify an award of special damages. Supporting information has not been presented identifying a "bright line" between Ms Miki's legal representation in which her lawyer raised issues about compliance with NMIA, and those incurred in relation to the Authority proceedings.[4] The Authority declines the claim for special damages.

Outcome

[60] Ngāti Mākino Iwi Authority is to pay a penalty of $7,000 within 14 days of the date of this determination. It is to pay $6,000 of the penalty amount to Cintika Miki, and the remainder of the penalty into the Authority for transfer to the relevant Crown Bank account.

Costs

[61] Aside from the special damages claim, Ms Miki seeks indemnity costs. The Court of Appeal identified that such costs may be ordered where a party behaved badly or very unreasonably.[5] NMIA's conduct of the proceedings does not reach that high level. The application for indemnity costs is declined.

[62] As indicated, supporting information showing a breakdown of costs has not been provided on Ms Miki's behalf. Given that, costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. The Authority does not accept NMIA's submission that a reasonable contribution to costs amounting to no more than $1,250 is appropriate. A higher proportion of the daily tariff is warranted.

[63] If the parties are unable to resolve costs given that indication, and an Authority determination on costs is needed, Ms Miki may lodge, and then should serve, a brief memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum, NMIA will then have 14 days to lodge any brief reply

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[4] *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 71 at [96] and *Henry v South Waikato Achievement Trust* [2023] NZEmpC 20 at [121].
[5] *Bradbury v Westpac Banking Corporation* [2009] 3 NZLR 400.

memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

Sarah Blick
Member of the Employment Relations Authority