

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 486
3277360

BETWEEN PRITHIKA MAHARAJ
Applicant

AND THE CHIEF EXECUTIVE OF
ORANGA TAMARIKI -
MINISTRY FOR CHILDREN
Respondent

Member of Authority: Helen van Druten

Representatives: Kate Tennent, counsel for the Applicant
Sophie Dawe, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 30 May 2025 from Applicant
19 May 2025 from Respondent

Determination: 12 August 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Prithika Maharaj seeks a penalty pursuant to s 149(4) of the Employment Relations Act 2000 (the Act) for breach of a record of settlement (ROS) signed by the parties on 26 October 2023.

[2] The ROS was certified by a mediator on 26 October 2023. The certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms were subject to ss 148A, 149(1) and 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.

[3] The ROS arose because of issues between Ms Maharaj and Ms LLW as her manager. The detail of those issues are not relevant except to the extent that Ms Maharaj did not feel that she had been fairly treated by Ms LLW in her employment. The ROS attempted to address this by requiring a change to Ms Maharaj's reporting line.

[4] Clause 3 of the ROS required a change in her reporting line from Ms LLW to Ms McGibney and that:

Oranga Tamariki — Ministry For Children agree that the reporting line for both supervision and management issues (including all employment matters) will change, within 14 days of the date of this agreement, from the current structure so that Prithika Maharaj will report directly to [Ms McGibney], Supervisor.

[5] Ms Maharaj says that even though the chief executive of Oranga Tamariki – Ministry for Children (Oranga Tamariki) confirmed the change by email on 29 November 2023 it had not changed in practice. She says that the organisational structure of the company still showed her reporting to Ms LLW and Ms LLW still handled her leave requests in breach of the ROS.

[6] This problem discusses a confidential ROS agreement between the parties. For that reason, only the existence of the agreement and the necessary section of that agreement are detailed here.

The Authority's investigation

[7] For the Authority's investigation the representatives agreed to hear the matter on the papers and an additional case management call was held on 24 March 2025 to seek clarification of specific facts not already provided to the Authority. Both parties were given an opportunity to provide submissions.

[8] 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.

Non-publication

[9] Oranga Tamariki requested non-publication of any identifying information on the basis that the issues for determination relate to a confidential ROS.

[10] I am referred to the recent Employment Court decision, *MW v Spiga Limited*.¹ The full court confirmed that open justice is a fundamental principle. Having considered the parties submissions, case law and Oranga Tamariki as a public sector agency, I am satisfied that Ms Maharaj's manager's name should not be published and therefore prohibit publication. Accordingly, Ms Maharaj's manager is referred to as Ms LLW in this determination. The letters are randomly generated and do not resemble her name.

[11] I have not identified any adverse consequences to justify any other non-publication and do not consider that the overall interests of the case and interests of justice require a departure from the principles of open justice.

The issues

[12] The issues requiring investigation and determination were:

- a. Was there a breach of the ROS signed by the parties on 26 October 2023?
- b. If so, is a penalty for that breach warranted pursuant to s149(3) of the Act?
- c. Is either party entitled to an award of costs?

Compliance with the ROS

[13] Agreed terms of settlement are final and binding on, and enforceable by the parties.² It is not for the Authority to query why the change in reporting line meant so much to Ms Maharaj. It was agreed as part of a contractual settlement agreement and those contractual obligations must not be taken lightly.

[14] Under the ROS, Oranga Tamariki committed to changing "the reporting line for both supervision and management issues (including all employment matters)" within 14 days (being by 9 November 2023). Oranga Tamariki made some changes following the ROS so the question of compliance is focused on determining the scope of the

¹ *MW v Spiga Limited* [2024] NZEmpC 147.

² Employment Relations Act 2000, s 149(3)(a).

relevant clause and then whether Oranga Tamariki made sufficient changes to meet its ROS obligations within that scope.

[15] It is appropriate to determine the scope of the wording in the ROS using the objective legal test for contractual interpretation. The aim therefore is to determine what the parties intended, considering “background that a reasonable person would regard as relevant”.³ From reading the background and evidence, in essence, Ms Maharaj did not want Ms LLW making decisions that could impact her employment. Ideally, she wanted no decisions at all from Ms LLW but at least not directly without another manager being involved.

[16] The following factors are therefore considered based on this test, the relevant background and taking an objective view of compliance with the ROS.

The organisation chart

[17] Ms Maharaj’s reporting line changed following the ROS but the organisation chart did not. Ms Maharaj said that Oranga Tamariki’s failure to change the organisation chart was a breach of the ROS. This mattered to Ms Maharaj because according to her, the organisation chart meant that she would need her former manager’s approval whenever she wished to apply for leave.

[18] In submissions, Ms Maharaj’s counsel, Ms Tennant suggested that clause 3 of the ROS meant that “the organisational structure ... was not to be the same as it was before the ROS was entered into”. However, I find that this extends the ROS beyond its initial meaning given the background reasoning for the ROS.

[19] While an organisation chart is a useful internal tool, it may be outdated and does not necessarily change who a person reports to for day-to-day line management. While Ms Maharaj may have wanted it updated formally, a failure to update the organisation chart in itself is not sufficient to constitute a breach of the ROS. The organisation chart did not impact on issues or employment matters and was not expressly included in the parties’ ROS in any event.

³ *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147, [2015] 1 NZLR 432 referenced in *New Zealand Air Line Pilots’ Association v Air New Zealand Ltd* [2017] NZSC 111 at [71].

[20] While Oranga Tamariki met the legal requirements of the ROS, it could have addressed Ms Maharaj's concerns by changing the organisation chart to reflect what was occurring in practice. It was possible to do so as it was updated in late February 2024.

Approving leave

[21] As noted above, the concern arose for Ms Maharaj because the organisation chart impacted on lines of reporting in the internal computer system for leave purposes. This was confirmed to Ms Maharaj in the 21 November 2023 email from Ms McGibney:

“for any matters relating to my role as Supervisor to you, that I report to Anna. This arrangement is not reflected in the organisational chart and as such there will be things like approving leave which will still sit with [Ms LLW]”.

[22] At face value, this email conflicted with the later evidence provided by Ms Carla Jssennagger as Delivery Advisor, Operational Support who stated:

Within Oranga Tamariki the MyHR system is set up in such a way that the reporting line between a supervisor and a social worker is not visible. In Prithika's situation for example she is supervised by a supervisor but in the MyHR system she is sitting under her current Site Manager. This is because the Site Manager is accountable overall for the site but this does not mean that the Site Manager is the line manager responsible for supervision and management... The supervisor... was responsible for managing Prithika's operational leave as they are responsible for managing the workload within their area of responsibility.

[23] Approving leave is part of employee management and reasonably included in “all employment matters”. Understandably, Ms Maharaj was concerned that Ms LLW would be the decision maker on her leave and claimed this as a breach. As Ms Tennant suggested, receiving a leave report or approving leave on the system suggests that the individual is managing that person's leave.

[24] In practice this was not evident. Oranga Tamariki confirmed that Ms LLW still received the leave reports (as Site Manager) but that Ms McGibney managed Ms Maharaj's leave at a practical level. Ms McGibney confirmed this in her evidence. She said that at one stage she was contacted by Ms LLW about Ms Maharaj's high leave balance but it was Ms McGibney who was expected to manage that leave balance with Ms Maharaj. This meets the requirements of the ROS. Again though, the process could have been more effectively managed by changing the organisation chart to mitigate Ms Maharaj's concerns.

Ability to influence

[25] Ms Maharaj also expressed concern that there is still a direct line between her and Ms LLW, through the intermediary of Ms McGibney. This leaves potential for Ms LLW to continue to control “supervision and management issues” and make decisions regarding Ms Maharaj’s employment matters by instruction to her direct report, Ms McGibney.

[26] An explanation of the organisational structure provided by Ms McGibney in evidence was useful to evaluate these concerns. Ms Maharaj did not work at an Oranga Tamariki site. She worked elsewhere with two other Oranga Tamariki colleagues to recognise the multi-agency work of her role. Ms LLW was the site manager of that site (and one other) so was necessarily involved in overall site and budgetary management. Ms IJssennagger also confirmed this was only for overall budgetary reasons.

[27] After the ROS “in about October or November 2023”⁴ Ms McGibney said the reporting lines changed. The other two colleagues remained reporting to Ms LLW but Ms McGibney took over line management responsibility for Ms Maharaj.

[28] This meant that for day-to-day line management issues Ms Maharaj could speak with Ms McGibney directly regarding any employment matters. In her absence Ms Maharaj could contact Ms Palmer. There was no evidence that Ms LLW was intervening or influencing employment matters even when Ms Maharaj’s new line manager was away.

Group communications

[29] Ms IJssennagger said that there were group communications and occasional group training from Ms LLW regarding matters that affected or involved all site staff, including Ms Maharaj. Examples given included Christmas celebrations, Practice Note sessions, webinars etc. Ms Tennant submitted that these breached the ROS but to take that approach would be impractical. These could be considered employment matters though objectively unlikely to be what the parties intended by the ROS wording. It would disadvantage and isolate Ms Maharaj to exclude her from those group

⁴ As provided in evidence by Ms McGibney.

communications, training and events and impractical to have Ms McGibney deliver these separately to Ms Maharaj.

[30] Ms LLW (as Ms McGibney's manager) was still involved in overall site operations (including Ms Maharaj's role). As a small team, this issue is difficult to entirely eliminate. It relies on the intervention and oversight of Ms Palmer and is best managed internally on a case-by-case basis if issues arise. There was no evidence to indicate that Ms LLW made any direct decisions regarding Ms Maharaj's employment matters after the ROS was signed.

[31] It was not a requirement of the ROS that Ms LLW was removed as Site Manager, that portions of her role relating to group employment matters were removed or that Ms Maharaj could undertake her role and have no contact with Ms LLW at all. That would be unworkable given the number of persons in the roles and worksite locations.

Did these factors amount to a breach of the ROS?

[32] Oranga Tamariki rejects that it has breached the ROS. It says that it was not aware of Ms Maharaj's concern until the Authority application was filed. This does not align with other evidence. Oranga Tamariki had received the 28 November 2023 email from Ms Maharaj's counsel so should reasonably have been aware that she was potentially unhappy. The reply to that email was met with a cursory response:

“Thank you for your email. I can confirm that your client reports to [Ms McGibney] for both supervision and management issues (including all employment matters).

[33] Had Oranga Tamariki taken the 28 November 2023 email more seriously, the issue may well have been resolved before the statement of problem was lodged in February 2024, some three months later.

[34] Taking an objective view of the contractual relationship as a whole, it was a working relationship where there was existing friction between the parties and the ROS was an attempt to reduce that friction and provide some distance between the individuals concerned namely Ms Maharaj and Ms LLW. The change in reporting line to Ms McGibney for employment matters provided that distance. Ms LLW was able to influence budget-related matters for the site and the team, but employment matters such as leave, performance, training and supervision now sat squarely with Ms McGibney.

[35] Having considered the evidence before me and the information obtained in the later call on 17 March 2025, I conclude that Oranga Tamariki did not breach compliance with this clause of the ROS signed with Ms Maharaj.

Supervision

[36] According to Oranga Tamariki, Ms Maharaj was not willing to engage in supervision until the organisation chart was changed. I make no comment on that matter as that is a performance matter for Oranga Tamariki to manage.

Penalties

[37] As no breach was established, no penalty is awarded.

Good faith obligations

[38] Oranga Tamariki did what was required to meet the legal requirements of the ROS. Though legally compliant, the approach to the matter (including the two-line email reply to counsel, failure to check in with Ms Maharaj on compliance and lack of follow-up response to the knowledge legal counsel was engaged) missed opportunities to resolve matters at an earlier stage. Even if Oranga Tamariki considers this a minor and inconsequential matter, it was important to Ms Maharaj. Oranga Tamariki could have managed Ms Maharaj's concerns raised on 28 November 2023 more actively and respectfully than they did in accordance with the objects of the Act.

[39] The object of the Act is to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship.⁵ Ms Maharaj was a current employee so this obligation should be especially front and centre of the employment relationship.

[40] Ms Maharaj could also have communicated more actively with Ms Palmer to resolve her concerns. No evidence was provided that she did so.

⁵Employment Relations Act 2000, s 3.

Costs

[41] As Ms Maharaj has been unsuccessful with this claim and the matter was determined on the papers, my preliminary view is that costs are to lie where they fall.

[42] If the parties wish to be heard further relating to costs, then Oranga Tamariki may lodge, and then should serve, a memorandum on costs within 14 days of the date of this determination. From the date of service of that memorandum, Ms Maharaj will then have 14 days to lodge any reply memorandum.

[43] The parties can anticipate the Authority will consider the preliminary view and may determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.⁶



Helen van Druten
Member of the Employment Relations Authority

⁶For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.