

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 579
3364943

	BETWEEN	RENATO MARTINS Applicant
	AND	THE BENCH TOP GUYS LIMITED Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Dave Cain, advocate for the Applicant Miranda Harvey, counsel for the Respondent	
Investigation Meeting:	12 July and 5 September 2025 by AVL	
Submissions and/or further evidence	12 August and 5 September 2025 from the Applicant and from the Respondent	
Determination:	18 September 2025	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Renato Martins, claims that the Respondent, The Bench Top Guys Limited (TBTG) breached s 149 of the Employment Relations Act 2000 (the Act) by committing a breach of a mediated settlement agreement between them.

[2] TBTG denies that it breached s 149 of the Act.

The Authority's investigation

[3] The investigation meeting took place by AVL. It had to be adjourned when it became apparent that Mr Martins required an interpreter to assist him during the investigation meeting.

[4] The investigation meeting resumed on 5 September 2025 with the assistance of an interpreter in the Portuguese language.

[5] The Authority received written and, under affirmation, oral evidence from the Applicant, Mr Martins, and from the witness for the Respondent, Dean Sheerin, Director and Shareholder.

[6] Written and oral submissions were received from Mr Cain on behalf of Mr Martins, and from Ms Harvey on behalf of TBTG. Whilst I have not referred to all the submissions made by the parties, I have fully considered them

[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 and specified orders made. It has not recorded all evidence and submissions received.

Issues

[8] The issues requiring investigation are whether or not TBTG breached s 149 of the Act.

Background

[9] Mr Martins was an employee of TBTG. An employment dispute arose between them and the parties entered into the Record of Settlement on 28 November 2024 which was certified by a mediator under s 149 of the Act (the ROS).

[10] The ROS was signed by a Mediator employed by the Ministry of Business, Innovation and Employment (MBIE) on 2 December 2024.

[11] The relevant clause of the ROS in respect of this issue is clause 1 which states:

1. These terms of settlement and all matters discussed in mediation shall remain, so far as the law allows, confidential to the parties.

[12] The Record of Settlement was certified under s 149 of the Act by the Mediator. That certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms:

- 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.

Background

[13] Mr Martins said that on 7 February 2025 he received a telephone call from a former colleague Mr Y. Mr Y was no longer employed at TBTG but when he had been, he and Mr Martins had worked closely together.

[14] Mr Martins said he had no doubt the caller was Mr Y, they were both native Portuguese speakers and the entire conversation was in Portuguese.

[15] During the telephone call, Mr Martins said Mr Y referred to the ROS between Mr Martins and TBTG. Mr Y said he had overheard other employees talking about Mr Sheerin wanting to find someone to record him (Mr Martins) talking about the ROS.

[16] Mr Y said he was warning Mr Martins because Mr Sheerin's intention was to use a recording to take legal action against Mr Martins and recover the money he had paid him in the ROS.

[17] Mr Martins said to his knowledge the only people privy to the ROS terms beside himself and Mr Sheerin were their respective representatives and his partner.

[18] Mr Martins recorded the telephone conversation with Mr Y and provided an English translation to the Authority. The recording includes the following comments by Mr Y and Mr Martins:

Mr Y: ...and you earned its money. I know you won. I don't know much you won.

RM: How did you find out about this?

Mr Y: I'll tell you. He wants someone to record you saying that you won his money. And he takes the money back, okay?

RM: I am not aware of this?

Mr Y: right? I am telling you because I found out. Now if you tell someone that I am warning you, are you still talking

RM: but did they tell you about this?

Mr Y: No, I listened. I listened to your name. So, my English is kind of bad. But even so, don't say anything. Stay quiet if others ask, you never worked there.

RM: No, I don't. To be honest with you.

Mr Y: ... and thinking that everything is okay, you have to keep quiet. Are you connected? Stay quiet. Don't comment anything to anyone. Don't say any think to anyone ...

...

Mr Y: ...stay quiet in yours. It's all good if you won, if you took something from him. You stay quiet, don't speak.

[19] Mr Sheerin said that prior to the mediation with Mr Martins, he had a general discussions with his employees. This conversation had arisen because he realised, after having received legal advice, that a recruitment practice he previously used was incorrect legally. He

had spoken to the employees about the advice he had received, and that he was introducing a new policy as a result.

[20] Mr Sheerin said that his employees all knew that the mediation with Mr Martins was taking place, but not the outcome of it, apart from his secretary who had to be informed of the ROS terms as she was to action its implementation.

[21] Mr Sheerin said he and his secretary, who was aware of the confidentiality requirement, had only spoken about the terms of the ROS in his office.

[22] On or about late January 2025 Mr Sheerin said that an employee mentioned that he had been asked by Mr Martins to meet for a social occasion. The employee was aware that Mr Martins was no longer an employee and that mediation had taken place the previous year.

[23] Mr Sheerin said he advised the employee that neither he nor Mr Martins were allowed to discuss what had happened in mediation. He confirmed he had told the employee to record the conversation if Mr Martins did refer to the ROS because he told him either he or Mr Martins could be sued if they discussed it.

[24] Mr Sheerin said he had not held any discussions with Mr Y about the ROS or the terms of it. Nor was he aware of how Mt Y could have overheard any conversation he may have had with his secretary or the other employee.

Did TBTG breach clause 1 of the ROS?

[25] Section 148(1) of the Act states:

148 Confidentiality

- (1) Except with the consent of the parties or the relevant party, a person who-
- (a) provides mediation services; or
 - (b) is a person to whom mediation services are provided; or
 - (c) is a person employed or engaged by the department; or
 - (d) is a person who assists either a person who provides mediation services or a person to whom mediation services are provided- ...

must keep confidential any statement, admission, or document created or made for the purposes of the mediation and any information that, for the purposes of the mediation, is disclosed orally in the course of the mediation.

[26] This requirement was commented upon by Judge Holden in *Culturesafe NZ Ltd v Turuki Healthcare Services Charitable Trust*.¹

¹ *Culturesafe NZ Ltd v Turuki Healthcare Services Charitable Trust* [2020] NZEmpC 165 at [33],

[27] The ROS states in clause 1:

These terms of settlement and all matters discussed in mediation shall remain, so far as the law allows, confidential to the parties.

[28] Accordingly it is the terms of any settlement and what is discussed during the course of the mediation that is confidential. The fact that parties to an employment relationship may have attended mediation is not confidential in and of itself.

[29] Employees in an organisation may be aware, and frequently are, that issues have arisen between an employee and an employer. They may also be aware that an employment relationship problem has been raised. Once that occurs it should ideally be resolved between the employer and the employee before coming before the employment resolution institutions. In the event that it cannot be resolved at that level, it is also probable that the other employees would be aware of this fact and that the parties will proceed to mediation, because mediation is well known in New Zealand as being: “the primary problem-solving mechanism”.²

[30] The importance of mediation in resolving employment disputes is also recognised in the Act which imposes a duty on the Authority to consider whether or not to direct the parties to mediation, or to further mediation if considered appropriate.

Did Mr Sheerin breach the ROS?

[31] I find that it was unwise of Mr Sheerin to have referred to mediation two months after the event when he spoke to the employee in January 2025. It was also unwise of him to have asked the employee to record the discussion if Mr Martins talked about the ROS because they ‘could be sued if they did so’.

[32] Mr Sheerin states that he did not discuss with the employee what had happened at mediation or any monetary award. Nonetheless a reasonable person knowing about the mediation might infer from such a statement that the resolution of the issues between the parties may have involved some form of financial outcome.

[33] However I find that is not sufficient in the circumstances of this case to substantiate a breach.

[34] In reaching a conclusion about what was discussed by Mr Sheerin, and examining the transcript of the conversation between Mr Y and Mr Y, I note the following comments by Mr Y to Mr Martins as significant: “... and you earned its money. I know you won. I don’t know how much you won.”; and “...It’s all good if you won. If you took something from him.”

² Employment Relations Act 2000 s 3(a)(v).

[35] I find that these comments by Mr Y indicate that he knew the mediation had occurred, he also appeared to know that Mr Martins had been successful, but not the actual terms of ROS. Mr Y may well have speculated that if a mediation had taken place, Mr Martins may have been awarded a financial amount in settlement, but such speculation is not knowledge of the terms of the ROS.

[36] I determine that TBTG did not breach the ROS.

Costs

[37] I consider this to be an appropriate case for allowing costs to lie where they fall.

[38] However if an Authority determination on costs is needed, TBTG may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Mr Martins would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[39] All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

Eleanor Robinson
Member of the Employment Relations