

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 614  
3368923

BETWEEN	KULWINDER SINGH Applicant
AND	CONTROL PLUS LIMITED (IN RECEIVERSHIP AND IN LIQUIDATION) First Respondent
AND	VIMAL SHARMA Second Respondent

Member of Authority:	Sarah Blick
Representatives:	Susanne Lass, advocate for the applicant First respondent not represented Vimal Sharma, in person
Investigation Meeting:	On the papers
Submissions and information received:	9 July 2025 for the applicant 23 July 2025 for Mr Sharma
Determination:	1 October 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] In February 2025 Kulwinder Singh and his former employer Control Plus Limited (CPL) resolved an employment relationship problem through a record of settlement (ROS). In the ROS, CPL's director Vimal Sharma agreed that should CPL fail to fulfil any monetary obligations under the ROS, Mr Sharma would personally satisfy any outstanding amounts due. The parties signed the ROS and a mediator certified it under s 149 of the Employment Relations Act 2000 (the Act).

[2] Mr Singh has applied to the Authority for a compliance order because CPL and/or its director Vimal Sharma has not made payments due to him in the ROS. Mr Singh also seeks interest, a penalty and costs. Although the ROS included a confidentiality clause, it was necessary for this determination to refer to some of its relevant terms.

[3] In March 2025 receivers were appointed for CPL, and in May 2025 the Official Assignee (OA) was appointed as its liquidator at the High Court in Auckland. The OA consented to this proceeding continuing.<sup>1</sup>

[4] Mr Sharma acknowledges payments have not been made, and asks that he be allowed to pay off the outstanding ROS amounts by way of instalment. He has not specifically addressed whether the Authority should impose a penalty on him, or award interest or costs.

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

[5] The Authority received an affidavit for Mr Singh and a witness statement for advocate Sunny Sehgal, both confirming no monies have been received from CPL or Mr Sharma pursuant to the ROS.

[6] Mr Sharma was given the opportunity to provide a sworn or affirmed affidavit addressing his ability to pay the monies owed under the ROS (including by way of instalment) and a penalty. Any relevant supporting documents were to be attached to the affidavit as exhibits. He provided a brief affidavit and relied on documents he lodged with the Authority with his statement in reply.

[7] This matter has been determined on the papers with the agreement of the parties.

[8] Another former employee of CPL also entered into an ROS with CPL and Mr Sharma, and has sought orders in respect of it.<sup>2</sup> A separate determination has been issued in respect of that matter.

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<sup>1</sup> Pursuant to the Companies Act 1993, section 248(1)(c).

<sup>2</sup> *Manjeet Singh v Control Plus Limited (in Rec and in Liq)* 2025 NZERA 615.

[9] As permitted by s 174E of the Act this determination has stated findings of fact and/or law, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result. Not all evidence or submissions are referred to but have been considered.

### **The issues**

[10] The issues requiring investigation and determination are whether the respondents have breached the ROS, whether a compliance order should be issued, whether interest on the outstanding amounts should be awarded, whether a penalty should be imposed on Mr Sharma and whether costs should be awarded.

### **Background**

[11] The parties acknowledge signing the ROS on or about 10 February 2025. Terms of the ROS included that CPL would pay the following:

- 3.1. ... Kulwinder Singh the sum of \$5040 (Five thousand and forty only), less PAYE deductions, in full and final settlement of any claims for holiday pay, which shall be paid on or before 31 March 2025.
- 3.2 \$1500 (One thousand five hundred) compensation pursuant to s123(1)(c)(i) of the Employment Relations Act 2000, which shall be paid on/before 31 May 2025.
- 3.3 \$3000 Plus GST (Three thousand + GST) on receipt of the invoice from Migrants Associates Limited, which shall be paid on/before 30 April 2025.

[12] Clauses 11.4 and 11.5 made clear that Mr Sharma provided a personal guarantee to full any monetary obligations under the ROS, enforcement of which could be made against Mr Sharma directly. Clause 11.3 stated that s 149(4) of the Act provides that a person who breaches an agreed term of settlement is liable to a penalty imposed by the Authority.

[13] The ROS was signed by a mediator on 20 February 2025. Their 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.

[14] Written correspondence provided by Mr Singh's advocate demonstrates the attempts made to recover the amounts owing under the ROS, which have been unsuccessful. Mr Sharma's initial responses to the requests for payment indicate an assumption that he could avoid liability by relying on CPL's liquidation.

[15] Mr Sharma acknowledges payments have not been made. Mr Sharma says he is experiencing extreme emotional and financial distress due to his liability for debts pursuant to personal guarantees and security over business loans taken during CPL's operation, which has ceased trading. He says he is unemployed, is facing a "prosecution notice" from Inland Revenue, and his situation does not allow him to offer any substantial repayment at this stage.

## **Findings**

### *Respondents have breached the ROS*

[16] By entering into the ROS, the parties resolved their employment relationship problem and agreed that all issues were fully and finally settled. The ROS is a legally binding and enforceable agreement and it is clear CPL breached clause 3 of the ROS in failing to make the agreed payments. Pursuant to clause 11 of the ROS, Mr Sharma is personally liable to pay the amounts in clause 3, CPL having failed to pay them to date.

### *Compliance order to be issued*

[17] 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 ensure payment is made.

[18] Mr Sharma has asked to pay the remaining amounts by way of instalment payments of \$20 per week.

[19] Mr Singh says this is not a case where repayment by instalments would be appropriate. It was submitted the debt has been owed for some time, no meaningful

repayment has been offered, and Mr Sharma has not shown any intention to honour the ROS. Given the conduct to date, it is said the greatest likelihood of recovery lies in requiring immediate payment.

[20] I have given careful consideration to Mr Sharma's request to pay the remaining amounts by way of instalment and acknowledge the predicament he is in. However, at the instalment rate proposed by Mr Sharma, it would take well over nine years to pay off the amount owing. No reasonable or viable payment plan has been proposed, nor has Mr Sharma attempted to make any payment towards the amounts owing to date. If the discretion to order payment by instalment exists under s 138(4A) of the Act, I decline to exercise that discretion in the circumstances.

[21] The imposition of a compliance order is a serious matter. Should Mr Sharma fail to comply with the compliance order as set out above, the Employment Court has powers to impose a fine not exceeding \$40,000.00, order property to be sequestered, or impose a sentence of imprisonment not exceeding three months.<sup>3</sup> Alternatively, a certificate of determination may be obtained from the Authority and enforcement obtained in the District Court.

[22] If the parties wish to enter into an arrangement between themselves allowing payment by instalment of the Authority's awards without the need for further enforcement proceedings, they may do so by agreement. In the meantime, the awards are payable in full pursuant to this compliance order.

*Interest is awarded*

[23] It is appropriate where a person has been deprived of the use of money to make an award for interest, and as such Mr Singh is entitled to an award of interest. Interest must be calculated on the full outstanding amount using the civil debt interest calculator from the date after all amounts became due under the ROS, namely from 1 June 2025 inclusive.<sup>4</sup>

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<sup>3</sup> Employment Relations Act 2000, ss 139 and 140(6).

<sup>4</sup> <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>.

*Penalty claim is adjourned*

[24] 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. Section 135(2)(a) provides that under the Act an individual is liable to a penalty up to \$10,000. Mr Singh asks that a penalty be imposed on Mr Sharma for breaching the ROS.

[25] I am minded to impose a penalty on Mr Sharma. However, in making a compliance order, I intend to adjourn the penalty claim to enable the compliance order to be complied with.<sup>5</sup> Mr Sharma should be aware that steps taken to remedy a breach are relevant to whether a penalty should be imposed and if so, in what quantum.

**Outcome**

[26] The respondents have breached the ROS. Control Plus Limited (in receivership and in liquidation) remains bound by the terms of the record of settlement certified on 20 February 2025. While a compliance order has not been sought in respect of CPL, it remains liable for the amounts owing in clauses 3.1 to 3.4 of the ROS, totalling \$9540.00.

[27] Pursuant to section 137 (2) of the Act, within 28 days of the date of this determination, Vimal Sharma must comply with the record of settlement certified on 20 February 2025, by paying the amounts owing in clauses 3.1 to 3.4 of the ROS, totalling \$9540.00.

[28] The respondents are jointly and severally liable to pay Kulwinder Singh interest on the outstanding amounts, calculated from 1 June 2025.

[29] The penalty claim is adjourned to enable the compliance order to be complied with.

**Costs**

[30] It is not appropriate to reserve costs in the circumstances.

[31] The Authority has the power under Schedule 2, clause 15 of the Act to award costs. However, the discretion to order a party to pay costs to another must be exercised

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<sup>5</sup> Employment Relations Act 2000, section 138(5).

on a principled basis. Those principles are well settled and are outlined in the Authority's Practice Note and Practice Direction, both of which are publicly available online.<sup>6</sup> When considering costs, the starting point is the Authority's daily tariff, which is \$4,500 for a one-day investigation meeting.

[32] Mr Singh is entitled to a contribution to his costs as he has been successful. Mr Singh's advocate says he has incurred costs in excess of the daily tariff, and seeks recovery of his full costs, or failing that, at the full daily tariff amount.

[33] Mr Singh has been put to unnecessary expense in seeking a compliance order. The circumstances are not such that indemnity costs are justified. Bearing in mind that costs in the Authority are modest and that the present application was relatively straight forward, the Authority orders Control Plus Limited (in receivership and in liquidation) and Vimal Sharma to pay \$650 in costs and reimburse the application of fee of \$71.55 to Kulwinder Singh within 28 days of the date of this determination. The respondents are jointly and severally liable to pay those costs.

Sarah Blick  
Member of the Employment Relations Authority

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<sup>6</sup> [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) and [www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf](http://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf).