

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 764  
3336141

BETWEEN	APIDECH SRINARK First Applicant
AND	WANIDA KAEWSUKSAI Second Applicant
AND	KHANONG PHAKDEERAK Third Applicant
AND	BNS GROUP LIMITED Respondent

Member of Authority:	Sarah Blick
Representatives:	Apidech Srinark, in person and for the second and third applicants Respondent not represented
Investigation Meeting:	On the papers
Submissions and information received:	8 October 2025 for the applicants
Determination:	27 November 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] In December 2024 the applicants Apidech Srinark, Wanida Kaewsuksai and Khanong Phakdeerak entered into records of settlement (ROS) with their former employer BNS Group Limited (BNS), resolving employment relationship problems between them. The applicants are family members who worked at a hospitality business in Albany, operated by BNS. The ROS were each certified by a mediator under s 149 of the Employment Relations Act 2000 (the Act).

[2] The applicants have applied to the Authority for a compliance order on the basis BNS has not made all payments due to them under the ROS. The applicants also seek a penalty or penalties.

[3] BNS has not lodged a statement in reply to the claims, so its position on the application remains unclear.

[4] Although the ROS included confidentiality clauses, it was necessary for this determination to refer to some of their relevant terms.

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

[5] The applicants originally lodged claims in November 2024 but there appear to have been difficulties serving the statement of problem at the time. The applicants did not update the Authority advising they had entered into the ROS in December 2024.

[6] The Authority's records indicate the statement of problem was served by courier at BNS' registered office address on 5 March 2025. No statement in reply was received.

[7] With the applicants entering into the ROS, the applicants did not further pursue their application. Mr Srinark subsequently contacted the Authority in May 2025 advising the ROS had been entered into and some payments had been received, but some monies remained unpaid under the them. He provided copies of the ROS.

[8] Nicola Giansante, one of BNS' directors, is recorded as the signatory for BNS in each of the ROS. Unsuccessful attempts were made to telephone Nicola Giansante on a mobile number provided by the applicants.

[9] A case management conference was set down for 28 July 2025 with the applicants, and a copy of the letter confirming the date was served at BNS' registered office address. At the time the conference call was scheduled, an Authority Officer telephoned the number for Nicola Giansante, which was not answered. The call proceeded in BNS' absence. During the call Mr Srinark confirmed the applicants wished to seek compliance orders as well as a penalty or penalties for non-compliance with the ROS. He agreed the matter could be heard and determined "on the papers" without the need for an investigation meeting.

[10] Directions dated 30 July 2025 (the directions), were served at BNS' registered office. In the directions the Authority identified the issues to be investigated and determined. The directions requested Mr Srinark to lodge an affidavit and bank statements by 11 August 2025 confirming all amounts received under the ROS. Allowance was made for BNS to engage and lodge a response by 18 August 2025.

[11] No information was received from either party in accordance with the directions.

[12] In an attempt to engage the parties, the Authority copied BNS' other director, Khieng Chiv, and another former director in relation to the application, into email correspondence in early October 2025. The Authority advised if BNS did not intend to respond to this matter, the Authority would proceed with its investigation based on information received from the applicants. Mr Chiv responded, advising the matter had been settled and the applicants already paid monies owed. He sought leave to respond on behalf of BNS, advising that the former director would be instructed to act.

[13] Prompts from the Authority Officer resulted in Mr Srinark providing evidence of bank transactions and confirmation of amounts owing under the ROS.

[14] Despite further email correspondence being sent to Mr Chiv and the former director, the Authority did further correspondence from them. On 10 November 2025 the Authority emailed further copies of the directions to Mr Chiv and the former director, warning that as no responses had been received, the Authority intended to determine the application based on the information received from the applicants, without further delay. As of today's date, BNS has made no further attempt to engage with the investigation.

[15] This matter is now determined on the papers, as agreed with the applicants.

[16] 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

[17] The issues requiring investigation and determination are whether BNS has breached the ROS, whether compliance orders should be issued, and whether a penalty or penalties should be imposed on BNS.

## Background

[18] The ROS between Mr Srinark and BNS, certified on 19 December 2024, states BNS agreed to pay a total sum of \$6,000 as a wage payment by way of weekly direct credit payments of \$300 (subject to applicable tax) until it was paid off. The ROS states payments would start on 22 January 2024, although this was clearly intended to be 22 January 2025.

[19] The ROS between Wanida Kaewsuksai and Khanong Phakdeerak and BNS, also certified on 19 December 2024, states BNS agreed to pay total sums of \$4,500 and \$5,500 as wage payments, respectively. These were to be paid by way of weekly direct credit payments of \$300 (subject to applicable tax) from 8 January 2024 until paid off. Clearly payments were intended to start on 8 January 2025.

[20] Each of the ROS contained the mediator's certification 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 the terms.

[21] Information from the applicants shows the following payments received under the ROS, and balance stated to be owing:

	Agreed amount	Amount received	Balance
Apidech Srinark	\$6,000	\$2,400	\$3,600
Wanida Kaewsuksai	\$4,500	\$3,000	\$1,500
Khanong Phakdeerak	\$5,500	\$3,000	\$2,500

## **Findings**

### *BNS have breached the ROS*

[22] 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. Based on the information received from the applicants, I am satisfied BNS has breached the three ROS in failing to make all agreed payments.

### *Compliance order to be issued*

[23] 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 have been breached, compliance orders should be issued to ensure full payment is made. The awards are now payable in full.

[24] The imposition of a compliance order is a serious matter. Should BNS fail to comply with the compliance orders, the Employment Court has powers to impose a fine not exceeding \$40,000 and order property to be sequestered.<sup>1</sup> Alternatively, a certificate of determination may be obtained from the Authority and enforcement obtained in the District Court.

## **Penalty**

[25] 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 a company is liable to a penalty up to \$20,000 for a breach.

[26] Each of the ROS contained payment schedules. It is appropriate to globalise the ongoing failures to pay by instalment as one breach per ROS.

[27] The level of penalty is determined by an assessment of the factors set out in s 133A of the Act alongside judgments of the Employment Court.<sup>2</sup> As a matter of public

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<sup>1</sup> Employment Relations Act 2000, ss 139 and 140(6).

<sup>2</sup> For example, *Borsboom (Labour Inspector) v Preet PVT Ltd* [2016] NZEmpC 143; *Nicholson v Ford* [2018] NZEmpC 132; *A Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12.

policy, in this case penalties against BNS are necessary to uphold the integrity of the full, final, binding and enforceable agreements allowed under s 149 of the Act.

[28] The ROS record that BNS understood the binding and enforceable nature of the ROS and it must be taken to have been aware of their obligations under them. BNS has not met the payment schedule as agreed. There is no basis on which to conclude that BNS' breaches of the ROS were inadvertent, minor or technical.

[29] The applicants have been put to the inconvenience to enforce the ROS. BNS has taken no steps to remedy the breaches and no explanation has been provided for the failure to comply with the ROS.

[30] A search of the relevant databases has not revealed previous proceedings for similar breaches involving BNS.

[31] Taking the known factors into account BNS is to be liable for penalties of \$1,500 for each ROS breached, which is within the range of penalties currently imposed for failure to pay monies due under a record of settlement and is proportionate to the seriousness of the breaches. In the circumstances of this matter, it is just for half the penalty sum (\$750) to be paid to each applicant and the balance (\$750) to the Crown.

### **Outcome**

[32] The Authority orders as follows:

Pursuant to s 137(2) of the Act, within 21 days of the date of this determination BNS Group Limited is ordered to comply with the records of settlement and make the following payments, subject to applicable tax deductions:

- (a) \$3,600 to Apidech Srinark; and
- (b) \$1,500 to Wanida Kaewsuksai; and
- (c) \$2,500 to Khanong Phakdeerak.

Within 21 days of the date of this determination BNS Group Limited is ordered to pay without deduction as follows:

- (a) \$1,500 penalty, half of which is to be paid to Apidech Srinark and half to the Crown; and

- (b) \$1,500 penalty, half of which is to be paid to Wanida Kaewsuksai and half to the Crown; and
- (c) \$1,500 penalty, half of which is to be paid to Khanong Phakdeerak and half to the Crown.

**Costs**

[33] As Mr Srinark has represented himself and his family in this matter, no order for costs is made. However, BNS Group Limited must reimburse the application of fee of \$71.55 to the applicants, also within 21 days of the date of this determination.

Sarah Blick  
Member of the Employment Relations Authority