

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 111
3417444

BETWEEN	JESSICA TAYLOR Applicant
AND	HAPU ORA NZ LIMITED Respondent

Member of Authority:	Simon Greening
Representatives:	Tim Vogel, advocate for the Applicant Kirsty McDonald, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions received:	23 February 2026
Determination:	27 February 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Jessica Taylor and Hapu Ora NZ Limited (HONL) signed a settlement agreement on 30 September 2025 (agreed terms of settlement). A mediator signed the agreed terms of settlement on the same date (settlement date).

[2] Ms Taylor lodged a statement of problem with the Authority alleging HONL had breached the agreed terms of settlement.

[3] Ms Taylor says HONL breached clause 4 and clause 6 of the agreed terms of settlement.

[4] Clause 4 records:

Hapu Ora NZ Limited agrees to pay a contribution to the employee's representative's costs of \$3,000 plus GST to the employee's representative within 10 days of receipt of an invoice from the employee's representative.

[5] Clause 6 records:

The employer will issue a certificate of service for the employee within 10 days of the date of this settlement. This certificate will cover the period of employment, position(s) held, description of duties and confirm the employment relationship has ended by way of resignation.

[6] Ms Taylor says HONL breached clause 4 because it did not pay her representative's legal costs within 10 days of receipt of invoice.

[7] Ms Taylor says HONL breached clause 6 because it did not provide her with a certificate of service within 10 days of the settlement date.

[8] Ms Taylor seeks penalties against HONL pursuant to s 149(4) of the Employment Relations Act 2000 (the Act), and an order that HONL pay the legal costs she has incurred in making this application to the Authority.

[9] HONL accepts that it inadvertently breached clause 4 and clause 6 of the agreed terms of settlement.

[10] HONL accepts clause 4 was breached because of a miscommunication between the respondent's legal counsel and a third-party payment provider.

[11] HONL accepts clause 6 was breached because Mr Ariel Metekingi (Mr Metekingi), the CEO of HONL, was at an off-side conference for two days, on 13 and 14 October 2025, and had limited access to emails. Mr Metekingi accepts the accidental oversight on his part.

[12] HONL's position is there is no basis for a penalty to be issued.

The Authority's investigation

[13] The Authority received witness statements from Ms Taylor and Mr Metekingi. The Authority also received written submissions from the parties' representatives.

[14] 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.

The issue

[15] The issue requiring investigation and determination is whether a penalty should be issued against HONL for breaching clause 4 and clause 6 of the agreed terms of settlement.

Penalties – the legal principles

[16] In determining an appropriate penalty, the Authority must have regard to the statutory considerations set out in s 133A of the Act and the additional factors discussed by the court in *Preet*.¹

[17] These factors are:

- (a) The object stated in s 3 of the Act.
- (b) The nature and extent of the breach.
- (c) Whether the breach was intentional, inadvertent, or negligent.
- (d) The nature and extent of any loss or damage suffered by any person.
- (e) Whether the person in breach has taken steps to avoid or mitigate any adverse effects arising from the breach.
- (f) The circumstances in which the breach occurred.
- (g) Whether the person in breach has been previously found by the Authority or court to have engaged in similar conduct.

Clause 4

[18] According to clause 4 of the agreed terms of settlement, HONL was required to pay the invoice for legal costs incurred by Ms Taylor, by 10 October 2025.

[19] At 2.45pm on 10 October 2025, Ms Taylor's legal representative received an email from HONL's legal counsel:

Hi Tim

We note the payments in accordance with the Record of Settlement are due today.

We are currently in the process of receiving funds, however, we may not be in a position to be able to pay these out by the end of today.

We apologise for this delay and will transfer the funds as soon as possible.

¹ *Borsboom v Preet PVT* [2016] NZEmpC 143 at [141] – [148].

[20] A few minutes later, Ms Taylor's legal representative replied by email:

Briana,

Non-payment today of those amounts set out in the RoS constitutes a breach of it. No explanation is offered for this breach. Jessica reserves the right to file proceedings in the Authority to seek a compliance order and for a penalty to be imposed on your client.

[21] In his witness statement, Mr Metekingi explained the payment was delayed because the third-party provider had not transferred funds to the respondent's representative's trust account.

[22] Mr Metekingi understood the payment from the third-party provider had already been made to the respondent's representative's trust account. On the day this payment was due, legal counsel for HONL provided notice of the delay to Ms Taylor's legal representative.

[23] Payment of Ms Taylor's invoice for legal fees occurred two working days after the timeframe set out in clause 4.

[24] I decline to issue a penalty for the following reasons:

(a) The breach was not intentional or deliberate.

(b) The breach was remedied within two working days of the date stipulated in clause 4.

(c) Counsel for HONL apologised for the delayed payment and gave advanced notice of the issue to Ms Taylor's legal representative.

(d) This situation is not like the case in *ITE*, where the breaches of the s 149 agreement were deliberate, sustained, and had a significant negative impact on others.²

Clause 6

[25] In her witness statement Ms Taylor explained that not receiving her certificate of service by the due date caused concern, and to inquire with her legal representative as to why HONL had not provided the certificate of service on the due date.

² *ITE v ALA* [2016] NZEmpC 42 at [63].

[26] In his witness statement, Mr Metekingi says that he was notified of the breach of clause 6 on 14 October 2025. Mr Metekingi took immediate steps to arrange for the certificate of service to be provided to Ms Taylor on the same day.

[27] I decline to issue a penalty for the following reasons:

- (a) The breach was not intentional or deliberate.
- (b) As soon as Mr Metekingi became aware of the breach, he took steps to ensure the certificate of service was provided to Ms Taylor forthwith.
- (c) The nature and extent of the loss suffered is minimal.

[28] In regard to the breach of clause 4 and 6 of the agreed terms of settlement, I don't consider there is a need for deterrence and note HONL has not previously been found by the Authority or the court to have engaged in similar conduct.

[29] I have also had regard to similar cases when considering whether a penalty is appropriate in circumstances involving technical breaches of agreed terms of settlement where adequate explanations have been provided.³

Costs

[30] It is accepted by HONL that it breached clause 4 and clause 6 of the agreed terms of settlement. Accordingly, HONL was liable for penalties. For the reasons explained in this determination I have declined Ms Taylor's application for penalties. However, Ms Taylor should not be put to the expense of contributing towards HONL's legal costs.

[31] Within 28 days of this determination HONL is ordered to reimburse Ms Taylor the filing fee for lodging this application with the Authority. Costs will lie where they fall.

Simon Greening
Member of the Employment Relations Authority

³ *Kerr v Angus (Lower Hutt) Ltd* [2022] NZERA 243; *Sharma v Golden Fern Extreme Limited* [2021] NZERA 137.