

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2026] NZERA 118  
3388504

	BETWEEN	KOLENI MU Applicant
	AND	HAMISH STOREY First Respondent
	AND	MINGYONG ZHENG Second Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Joseph Harrop and Fiona McMillan, counsel for the Applicant Respondents in person	
Investigation Meeting:	On the papers	
Submissions and/or further evidence	12 August and 5 September 2025 from the Applicant None from the Respondent	
Determination:	2 March 2026	

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, Koleni Mu, claims that the First and Second Respondents, Hamish Storey and Mingyong (Jayden) Zheng (the Respondents), have breached s 149 of the Employment Relations Act 2000 (the Act) by committing a breach of a mediated settlement agreement between them.

**The Authority's investigation**

[2] This matter came before the Authority in July 2025 as an application for compliance with a mediated record of settlement lodged by Lane Neave on behalf of Mr Mu.

[3] The Authority arranged for a case management conference to be held on 18 August 2025, however the Applicant contacted the party seeking to adjourn it on the basis that an agreement to settle in principle had been reached by the parties.

[4] The case management conference was adjourned as requested but as there was no further communication on whether or not settlement had been completed, the Authority requested an update.

[5] A Joint Memorandum of Counsel dated 18 November 2025 setting out an agreement to resolve matters as to settlement was lodged with the Authority on 18 November 2025, but the Authority was asked to hold it pending joint confirmation by the parties that the matter was resolved.

[6] On 22 December 2025 the Applicant notified the Authority that the Applicant's withdrawal had been dependent on receipt of payment. This not having been received, the Applicant sought to continue its application for compliance.

[7] A case management conference call was held on 11 February 2026. The Respondents did not attend, and Directions were issued that same day to the parties' representatives.

[8] On 20 February 2026 when an Authority Officer enquired about the Respondents submissions, Mr Meys informed the Authority that he was no longer instructed. Consequently the Authority's Directions were sent to the First and Second Respondents, and the deadline for lodging submissions was extended until 25 February 2026.

[9] No submissions have been received from the First and/or Second Respondents.

[10] The matter was heard on the papers. Submissions were lodged by Mr Mu with a supporting affidavit. No submissions have been received from the Respondents.

[11] 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**

[12] The issues requiring investigation are whether or not a compliance order should be made and whether a penalty should be ordered against Mr Storey and Ms Zheng.

### **Relevant Background**

[13] Mr Mu had worked as Quantity Surveyor with FZ Group NZ Limited (FZ Group). That company is now in liquidation. Mr Storey and Ms Zheng were directors of FZ Group NZ Limited .

[14] Following a period of non-payment of salary by FZ Group Mr Mu raised a wage and personal grievance claim and later lodged a Statement of Problem in the Authority against FZ Group, Mr Storey and Mr Zheng.

[15] The dispute was settled in a Record of Settlement under s 149 of the Act signed by Mr Mu and the Respondents on 12 May 2025. It was signed by a mediator of the Ministry of Business, Innovation and Employment on 5 June 2025 (the Record of Settlement).

[16] The parties to the Record of Settlement were Mr Mu, FZ Group, Mr Storey and Ms Zheng. FZ Group is in liquidation and has no ability to pay the monies owed to Mr Mu.

[17] Clause 2 of the Record of Settlement stated :

2. The Respondents will pay the below sums. The Respondents have joint and several liability to make the payments in full, irrespective of any changes in any of legal status/statuses, including but not limited to liquidation, receivership, voluntary administration, bankruptcy and/or striking off the from the companies register. The sums to be paid are:

(a) Compensation to the Employee pursuant to section 123(1)9c )(i) of the Act (as follows)

- (i) \$5,000 on or before Monday, 12 May 2025
- (ii) \$20,000 on or before Monday, 19 May 2025
- (iii) \$7,000 on or before Monday 26 May 2025
- (iv) \$5,000 on or before Saturday 14 June 2025

(b) A contribution to the Employer's legal fees, as follows

- (i) \$5,000 +GST by the later of
  - (A) Friday 26 May 2025, or
  - (B) 2 working days after receipt of a GST invoice from Lane Neave
- (ii) \$5,000 + GST by the later of
  - (A) Saturday 14 June 2025, or
  - (B) 2 working days after receipt of a GST invoice from Lane Neave.

[18] 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 were subject to s 148A, s 149(1) and s 149 (3), i.e. 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.

[19] Lane Neave provided an invoice, addressed to both Respondents.

[20] Mr Mu was paid the first instalment on \$5,000 under clause 2 (a)(i) of the Record of Settlement, however further promises to pay the remaining amounts due under the Record of

Settlement including in the Joint Memorandum of Counsel dated 18 November 2025 have not occurred.

[21] Having considered this matter I am satisfied that Mr Storey and Ms Zheng have not complied with clause 2 of the Record of Settlement.

## **Remedies**

### *Compliance Order*

[22] I am satisfied that the payments itemised in clause 2 (a) of the ROS were not paid to Mr Mu, with the exception of the first payment of \$5,000, in accordance with the timetable set out in the Record of Settlement

[23] I am satisfied that the payments itemised in clause 2 (a) of the ROS being Mr Mu's legal fees were not paid in accordance with the timetable set out in the Record of Settlement.

[24] The outstanding payments are due and payable.

[25] In order to effect compliance with the Record of Settlement, and since Mr Storey and Ms Zheng are jointly and severally liable, I therefore order Mr Storey and/or Ms Zheng jointly and severally to pay Mr Mu the outstanding amounts due no later than 14 days from the date of this determination.

## **Penalties**

[26] Mr Harrop has sought penalties on behalf of Mr Mu for breach of the Record of Settlement. He submits that the breach of the Record of Settlement is deliberate and sustained with the failure to make multiple payments across several months, emerging sporadically and agreeing to pay, then renegeing again.<sup>1</sup> Accordingly it is submitted that the Respondents' level of culpability is high.

[27] It is submitted that there has been no remorse or insight provided by the Respondents, or compensation, reparation or restitution, or any other steps taken to avoid or mitigate the breach or its adverse effects. The loss to Mr Mu is substantial as he has only received \$5,000 of the \$43,000 owed to him.

[28] The relevant principles for the Authority to follow when assessing the level of penalty are set out in *ITE v ALA* as being

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<sup>1</sup> *ITE v ALA* [2026] NZEmpC 42 at [61] – [63].

- To protect the finality and integrity of [s 149](#) settlement agreements by deterring the individual transgressor and others from similar breaches;
- To punish the transgressor;
- Consistency with penalties imposed on others in similar circumstances;
- An assessment of the nature and extent of the breach, including whether it was deliberate, one-off or sustained, with the maximum penalty being reserved for the worst cases;
- Any steps taken by the transgressor to remedy the breach;
- Proportionality in the circumstances.<sup>2</sup>

[29] I find that the non-payments of the amounts due to Mr Mu caused stress to him, and he has been put to additional cost in having to apply to the Authority to obtain compliance with an agreement freely entered into by the Respondents.

[30] The Act includes provisions encouraging parties to resolve their employment relationship issues between themselves. The Records of Settlement represents such a resolution and therefore the failure by one party to honour the terms of any resulting agreement is a serious matter.

[31] Public confidence in s 149 settlements will be undermined if it is perceived that parties are permitted to breach these settlements with impunity. It is important that the parties can have confidence in the enforceability of the terms of agreed settlements.

[32] I order Mr Storey and Ms Zheng jointly and severally to pay a penalty of \$5,000.00 to the Authority to be paid to the Crown Trust Account. Of that amount, \$2,000 is to be paid to Mr Mu. Payment is to be made within 14 days of the date of this Determination.

### **Filing Fee**

[33] Mr Storey and Ms Zheng must also jointly and severally reimburse Mr Mu the filing fee of \$71.56 within 14 days of the date of this Determination.

### **Costs**

[34] It is submitted for Mr Mu that he should be awarded costs.

[35] The Authority uses a tariff-based system for awarding costs, based on the rate of \$4,500 for the first day of hearing, and \$3,500 for each subsequent day.

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<sup>2</sup> *ITE v ALA* [2016] NZEmpC 42 at [61]

[36] This matter was determined on the papers. I consider it appropriate to take the normal daily tariff in the Authority and to take a half day investigation meeting as the starting point. . I consider that \$2,500.00 is the appropriate costs award in this case.

[37] Accordingly Mr Storey and Ms Zheng are ordered jointly and severally to pay Mr Mu the sum of \$2,500.00 towards his legal costs, pursuant to clause 15 of Schedule 2 of the Act, within 14 days of the date of this Determination.

### **Orders**

[38] I have made the following orders:

- **Mr Storey and Ms Zheng are ordered jointly and severally to pay the following amounts to Mr Mu:**
  - (i) **\$33,000, the outstanding amount due under clause 2(a) of the Record of Settlement;**
  - (ii) **\$10,000, the outstanding amount due under clause 2(b) of the Record of Settlement**
- **Mr Storey and Ms Zheng are ordered jointly and severally to pay a penalty of \$5,000 to the Authority to be paid to the Crown Trust Account. Of that amount, \$2,000 is to be paid to Mr Mu.**
- **Mr Storey and Ms Zheng are ordered jointly and severally to pay Mr Mu \$71.56 in respect of the Authority filing fee.**
- **Mr Storey and Ms Zheng are ordered jointly and severally to pay Mr Mu the sum of \$2,500.00 towards his legal costs, pursuant to clause 15 of Schedule 2 of the Act.**
- **All payments are to be made within 14 days of the date of this determination.**

Eleanor Robinson  
Member of the Employment Relations Authority