

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2026] NZERA 211
3418444

BETWEEN	MARGARET GILL Applicant
AND	D & D SAI 2023 LIMITED Respondent
	LUXURIOUS SPA & NAILS LIMITED Respondent

Member of Authority: Peter van Keulen

Representatives: Mary-Jane Thomas, counsel for the Applicant
Zachary Pentecost, counsel for the Respondents

Investigation Meeting: On the papers

Submissions Received: 16 February 2026 from the Applicant
20 February 2026 from the Respondent

Date of Determination: 8 April 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Margaret Gill had an employment relationship problem with D & D Sai 2023 Limited and Luxurious Spa & Nails Limited.

[2] Ms Gill, D & D Sai and, Luxurious Spa & Nails were able to settle the employment relationship problem; the terms of settlement were documented in a Record of Settlement between the three parties dated 7 October 2025 (the Record of Settlement).

[3] Pursuant to the Record of Settlement, Luxurious Spa & Nails was to make four payments of \$2,500 to Ms Gill within specified time periods and pay a contribution to Ms Gill's legal fees also within a specified time period.

[4] Luxurious Spa & Nails failed to pay the first two payments of \$2,500 on time. In response to the first payment not being made by the due date, and because Ms Gill had not received any explanation or reassurances of payment from Luxurious Spa & Nails, Ms Gill lodged a statement of problem in the Authority against both D & D Sai and Luxurious Spa & Nails seeking a compliance order and a penalty for the breach of the Record of Settlement.

[5] Luxurious Spa & Nails did not respond to the statement of problem, but it did subsequently pay the first instalment of \$2,500. It then failed to pay the second instalment when due but did pay it later. The final two instalments were then paid in time.

[6] In addition, whilst Luxurious Spa & Nails paid some of the legal fees there remained \$114.42 owing from 21 October 2025. This was finally paid by Luxurious Spa & Nails on 11 February 2026.

[7] In the end, Luxurious Spa & Nails paid all the amounts it owed to Ms Gill under the Record of Settlement, so compliance orders were not required; however, Luxurious Spa & Nails did breach the Record of Settlement three times by not paying amounts due on time.

The Authority's investigation

[8] The employment relationship problem I investigated and this determination resolves is whether a penalty should be imposed against Luxurious Spa & Nails for its three breaches of the Record of Settlement, and if so, the quantum of the penalty.

[9] I investigated this employment relationship problem on the papers, that is by reference to the statement of problem and attached documents and by considering the written submissions of the parties' representatives.

[10] As permitted by s 174E of the Employment Relations Act 2000 (the Act) I have not recorded all the evidence and submissions received, in this determination; I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

Penalty for a breach of the Record of Settlement

[11] Pursuant to s 149(4) of the Act a person who breaches an agreed term of settlement certified by an MBIE mediator under s 149 of the Act is liable for a penalty.

[12] The Record of Settlement was certified by an MBIE mediator pursuant to s 149 of the Act. And, Luxurious Spa & Nails breached the agreed terms of the Record of Settlement by not making three of the agreed payments on time.

[13] Given the straightforward breaches and notwithstanding that all payments due under the Record of Settlement have now been paid it is appropriate for a penalty to be imposed against Luxurious Spa & Nails.

Quantum of penalties

[14] There are two aspects that inform the assessment of penalties; the considerations set out in s 133A of the Act and the four step approach to fixing penalties set out in *Borsboom v Preet PVT Limited*.¹

[15] Adopting the approach used by Judge Corkill in *A Labour Inspector v Matangi Berry Farm Limited*,² I will first consider the relevant statutory requirements in s 133A of the Act and then I will use that information to assess quantum based on the four steps in *Preet*.

Relevant factors in s 133A of the Act

[16] *The object stated in s 3 of the Act* – one of the objects of the Act is to promote mediation as the primary problem-solving mechanism for employment relationship problems and another object is to reduce the need for judicial intervention. Luxurious Spa & Nails' breaches of the Record of Settlement cut directly across these purposes; this is significant.

[17] *The nature and extent of the breaches and the extent of any loss or damage suffered* – the nature of the breach, that is, failing to pay agreed amounts under the Record of Settlement is significant but it is minimised by Luxurious Spa & Nails correcting its breach by making payments. I do note however that the breaches were sufficiently significant for Ms Gill that she lodged this enforcement action in the Authority and persisted in seeking a penalty despite

¹ *Borsboom v Preet PVT Limited* [2016] NZEmpC 143.

² *A Labour Inspector v Matangi Berry Farm Limited* [2020] NZEmpC 43.

receiving payment of all amounts she was owed. I assess the severity of the breaches as relatively minor on an objective basis but reasonably egregious to Ms Gill.

[18] *Were the breaches intentional, inadvertent or negligent* – Luxurious Spa & Nails says the missed payments were due to the authorising person within Luxurious Spa & Nails being absent and then cashflow difficulties on that person returning. I consider Luxurious Spa & Nails' actions in not making the three payments on time as being negligent rather than deliberate or inadvertent.

[19] *Previous conduct* - there is no evidence of previous breaches by Luxurious Spa & Nails.

Preet step 1 – nature and number of breaches

[20] Luxurious Spa & Nails breached the Record of Settlement three times by making late payments. I will treat this as one breach of the Record of Settlement for the purposes of setting the amount of the penalty.

Preet step 2 – severity of breaches

[21] In addition to weighing up my consideration of the factors in s 133A of the Act I must also consider the additional factors referred to in *Preet* of deterrence and culpability.

[22] Putting this together I consider the following as being relevant when assessing the severity of Luxurious Spa & Nails' breach:

- (a) Given the purposes of the Act that I have referenced, a deterrent factor is necessary in setting a penalty.
- (b) I have assessed the nature and extent of the breaches and losses suffered as relatively minor.
- (c) Payment of all sums due under the Record of Settlement have now been made.
- (d) Luxurious Spa & Nails acted negligently in not meeting the payment schedule it had agreed to; its culpability is on the low side as it did not act intentionally to deprive Ms Gill of payments it had agreed to make.

[23] I conclude that based on the severity of breach by Luxurious Spa & Nails a small penalty should be imposed, and the starting point for assessment is \$1,000.

Preet step 3 – means and ability of the respondent to pay

[24] There is no indication of financial hardship that would mean Luxurious Spa & Nails cannot pay a penalty for its breach of the Record of Settlement.

Preet step 4 – proportionality

[25] Penalty amounts should be in proportion to the gravity of the breach i.e. proportionate to the amount of money not paid. In this case the amounts that were paid late totalled \$5,114.42.

[26] Penalty amounts should also be consistent with other penalties imposed in similar circumstances. I have considered recent determinations of the Authority in which there has been a failure to pay payments due under settlement agreements for which penalties have been imposed. In these cases, penalties ranged from \$1,000 down to \$350.³ This case aligns with those determinations where penalties were at the lower end of this spectrum – being cases where the payments that were not made were smaller in amount and/or had subsequently been paid.

[27] So that the penalty amount is proportionate to the amount of Luxurious Spa & Nails' breaches and so that the penalty aligns with the other recent determinations I will reduce the penalty amount to \$500.

Part payment of the penalty to Ms Gill

[28] Whilst penalties are ordinarily payable in full to the Crown I can order part of a penalty to be paid to the party impacted by the breaches (giving rise to the penalty). In this case I consider it appropriate to order that part of the penalty imposed against Luxurious Spa & Nails be paid to Ms Gill and I set that amount at 75%.

³ *Latrell Te Autu Van Hout v Wyatt Construction Limited* [2024] NZERA 703; *Taizan-Jay Lucas v Pacific Holdings & Investments Limited and Juan Carlos Cantor* [2024] NZERA 543; *STL Trading Company Limited v Jarred Cottle* [2025] NZERA 585; *Paige Meikle-Thomson v Few Beers Limited and Grant Murphy* [2025] NZERA 796; and *Chantelle Jull v Laputa Limited* [2026] NZERA 110.

Summary and orders

[29] Luxurious Spa & Nails breached the Record of Settlement.

[30] Within 28 days of the date of this determination Luxurious Spa & Nails must pay a penalty of \$500; with \$125 paid to the Crown and \$375 paid to Ms Gill.

Costs

[31] Costs are reserved.

[32] The parties are encouraged to resolve any issue of costs between themselves.⁴

[33] If the parties are unable to resolve costs and a determination on costs is needed, Ms Gill may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that memorandum the respondents will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

Peter van Keulen
Member of the Employment Relations Authority

⁴ If it assists the parties in coming to an agreement, I note that costs were awarded in *Latrell Te Autu Van Hout v Wyatt Construction Limited* [2024] NZERA 703 and *STL Trading Company Limited v Jarred Cottle* [2025] NZERA 585, at \$1,125 and \$1,000 (respectively) and I consider these two awards align with the circumstances of this case.