

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI A TARA ROHE**

[2026] NZERA 216  
3407844

BETWEEN	MILES WAITE Applicant
AND	AITKEN TRANSPORT (1994) LIMITED Respondent

Member of Authority:	Sarah Kennedy-Martin
Representatives:	Kylie Thorne, advocate for the Applicant Alistair and Debbie Stewart for the Respondent
Investigation Meeting:	On the papers
Submissions Received and Information Received:	9 December 2025 from the Applicant Up to 23 March 2026 from the Respondent
Determination:	9 April 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Mr Waite has lodged an application seeking compliance with a s 149 settlement agreement between the parties, in particular, two payments that were agreed between the parties that remain outstanding. He also seeks interest on the outstanding amounts, a determination the Record of Settlement was breached, penalties for breaches of the settlement agreement, a determination the director will be personally liable for the amounts set out in the Record of Settlement if the company does not make payment, a determination the Wages Protection Act 1983 has been breached, penalties for breaches of the Wages Protection Act for failing to pay wages and costs.

[2] Mr Waite was made redundant by Aitken Transport (1994) Limited (Aitken Transport) on 24 October 2023. Aitken Transport failed to pay Mr Waite's final pay. After Mr Waite lodged a statement of problem in the Authority raising a claim for unpaid wages, annual leave and holiday pay, the parties entered into a Record of Settlement under s 149 of the Employment Relations Act 2000 (the Act) dated 25 August 2025.

[3] On 28 August 2025, a Ministry of Business, Innovation and Employment mediator certified their agreement. The effect of certification is that the terms agreed were final and binding and could only be brought before the Authority for the purposes of enforcement.

[4] Aitken Transport failed to make payments pursuant to the Record of Settlement. The Record of Settlement provides for a payment schedule with payments to be made on 29 August 2025, 18 September 2025 and 18 October 2025. If any payments were missed, the entire outstanding amount becomes due and payable immediately.

[5] A total of \$8338.00 in wage arrears should have been paid in full by 18 October 2025. A contribution towards representative's costs in the amount of \$4041.50 should also have been paid to Matthews Walker by the same date on the provision of invoices.

[6] By way of four payments of \$200.00, Aitken Transport has now paid \$800 to Mr Waite towards the amount of unpaid wages leaving \$7538 outstanding and it has also paid \$800 towards representatives costs leaving \$3847.73 outstanding.

[7] Aitken Transport does not deny it owes the amounts set out in the Record of Settlement and agrees those payments are overdue. Aitken Transport has sent various emails seeking to adjourn the Authority's timetable or asking for further time to make the payments because of its financial positions.

[8] In an email dated 16 December 2025 Aitken Transport asked for more time and provided an email from an accountant who was working to secure a loan to clear the debt owed to Mr Waite. There have been a number of emails from Aitken Transport setting out an intention to pay the outstanding amounts to Mr Waite. However, the amounts above remain outstanding.

## **The Authority's investigation**

[9] The parties agreed the matter could be heard on the papers. In addition to his statement of problem and the settlement agreement, Aitken Transport sent emails but did not participate in the case management teleconference.

[10] 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.

## **Has there been a breach of the settlement agreement**

[11] Clause 4 of the settlement agreement between the parties provided Aitken Transport would pay Mr Waite \$8338.00 in three instalments. Clause 5 provided Aitken Transport would pay \$4041.50 (plus GST) to Matthews Walker Limited as a contribution towards the provision of employment advocacy services.

[12] As set out above the total amounts were to have been paid in full by 18 October 2025. A total of \$1,600.00 has been paid leaving \$7538 in wage arrears and \$3847.73 in costs towards representation outstanding.

[13] Clauses 4 and 5 of the Record of Settlement have been breached and in accordance with cl 6 the entire outstanding amounts became payable on 19 October 2025 after the full amounts were not paid in accordance with the payment plan.

[14] The breach of cl 4 of the Record of Settlement is also a breach of the Wages Protection Act 1983 because there is no dispute that amount represents unpaid wages.

## **Should a compliance order be made?**

[15] A compliance order may be made when any person has not observed or complied with the provision of an employment agreement or any terms of settlement or a decision that is a breach of s 149(3) and s 151 provides it may be enforced by compliance order.<sup>1</sup>

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<sup>1</sup> Employment Relations Act 2000, s 137(1)(a)(iii).

[16] I have already found there has been a breach of the agreed terms between the parties and under s 149(3) of the Act those terms are final, binding and enforceable. There is an obligation on Aitken Transport to comply with the terms of the Record of Settlement. This is coupled with a statutory obligation to pay wages set out in s 4 of the Wages Protection Act 1983. Once wages become due under the Wages Protection Act 1983, the entire amount is to be paid. Failure to pay wages when they become due amounts to an unlawful deduction and employees are able to take action to recover monies due to them and to seek penalties against an employer.

[17] I am satisfied a compliance order is necessary given the balance of funds remains unpaid.

### **Should a penalty be awarded?**

[18] Mr Waite seeks a penalty for a breach of the settlement agreement, for failing to pay the two outstanding amounts in full and for the breach of the Wages Protection Act 1983 for failing to pay wages once they became due. Penalties were sought within 12 months of the date when the issue of non-payment of wages became known to Mr Waite.

[19] Given the finding above that Aitken Transport is in breach of both the settlement agreement and the Wages Protection Act, it is liable to a penalty.<sup>2</sup> The maximum penalty is \$20,000 in the case of a company.<sup>3</sup> The standard of proof for the imposition of a penalty in this jurisdiction is on the balance of probabilities.<sup>4</sup> The primary purpose of a penalty is to punish the wrongdoing and act as a deterrent to further breaches.<sup>5</sup> Penalties can be appropriate for breaches of settlement agreements in order to protect the finality and integrity of s 149 agreements and to underscore employee's statutory entitlement to minimum employment standards. Payment of wages is not optional.

[20] It is important that parties ought to have confidence in settlement agreements under s 149 of the Act. There are two breaches that are ongoing. Aitken Transport has consistently referred to financial difficulties, however, no financial information has been provided to allow the Authority to assess this. There has also been limited engagement with the Authority's investigation and repeated suggestions the

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<sup>2</sup> Employment Relations Act 2000 s 149(4) and Wages Protection Act 1983, s 13.

<sup>3</sup> Employment Relations Act 2000, s135(2)(a).

<sup>4</sup> *Xu v McIntosh* [2004] 2 ERNZ 448 at [29].

<sup>5</sup> *Borsboom v Preet PVT Ltd* [2016] NZEmpC 143 at [51] – [52].

outstanding amounts would be paid shortly that have not eventuated. A number of extensions were granted by the Authority to allow for payment to be made.

[21] Taking into account the relevant matters the Authority must have regard to when awarding penalties<sup>6</sup> and the further guidance on penalties for breaches of settlement agreements set out in *ITE v ALA*,<sup>7</sup> a penalty is appropriate in order to protect the finality and integrity of s 149 agreements.

[22] However, at this stage I decline to order a penalty as the focus is on compliance given the outstanding amounts, the length of time these amounts have been outstanding and the fact it includes a component of unpaid wages.

[23] The final determination on penalty will be adjourned in accordance with s 138(5) of the Act to enable compliance with the order below and leave is reserved for Mr Waite to return to the Authority for a determination on penalties. Interest can also be considered at that time.

#### **Is Mr Stewart a person involved in the breaches?**

[24] Mr Stewart is the sole director and shareholder of Aitken Transport. Aitken Transport does not deny wages have remained unpaid since Mr Waite was made redundant on 24 October 2023. Mr Stewart has sent some of the emails to the Authority and attended the first case management conference with the parties.

[25] The Court of Appeal in *A Labour Inspector v Southern Taxis and Ors* settled the legal test regarding persons involved in relation to s 142W(1) of the Act:<sup>8</sup>

*The level of knowledge required to establish liability for a person “involved in a breach” of employment standards under s 142W(1) of the Employment Relations Act 2000 is knowledge of the essential facts that establish the contravention by the employer.*

A number of assertions were made by Aitken Transport and Mr Stewart about Mr Waite’s conduct. These demonstrated knowledge of Mr Waite’s employment, the non-payment of wages, the reasons for that and the steps that Aitken Transport was taking to be in a position to pay the outstanding amounts.

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<sup>6</sup> Above n2, s 133A.

<sup>7</sup> *ITE v ALA* [2016] NZEmpC 42 at [61].

<sup>8</sup> *A Labour Inspector v Southern Taxis and Ors* [2021] NZCA 705 at [59].

[26] The employment agreement was not provided to the Authority but Mr Stewart is the sole director of Aitken Transport and therefore he is responsible for record keeping and payroll. This together with the knowledge Mr Stewart has demonstrated of the breaches during the Authority's investigation process I find he is a person directly involved in the breaches under s 142W of the Act. That means if the outstanding amounts are not paid by Aitken Transport Mr Waite can recover those amounts from Mr Stewart in person.

### **Orders**

[27] Mr Waite must provide an invoice from his representative showing the work done, money paid and money owing under clause 5 of the settlement agreement.

[28] Compliance is ordered under s 137(2) of the Act. Aitken Transport (1994) Limited must comply with clauses 4 and 5 of the Record of Settlement with Miles Waite and its statutory obligations under the Wages Protection Act to pay wages and pay Miles Waite within 28 days of this determination the following amounts:

- (a) \$7538.00 in unpaid wages;
- (b) \$3847.73 as a contribution to representative costs; and
- (c) Reimbursement of the filing fee of \$71.55.

[29] Leave is reserved to return to the Authority for consideration of penalties and interest.

### **Costs**

[30] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[31] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Waite 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 Aitken Transport (1994) Limited 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.

[32] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>9</sup>

Sarah Kennedy-Martin  
Member of the Employment Relations Authority

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<sup>9</sup> [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies)