IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 231
3419924

	BETWEEN	SLADE ANDERSON Applicant
	AND	NEW STYLE BUILDERS 2021 LIMITED Respondent

Member of Authority:	Sarah Blick
Representatives:	William Lynch, advocate for the applicant Chris Baird, counsel for the respondent
Investigation Meeting:	On the papers
Submissions and information received:	17 March 2026 from the applicant 7 April 2026 from the respondent
Determination:	20 April 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In September 2025 the applicant Slade Anderson entered into a record of settlement (ROS) with his former employer New Style Builders 2021 Limited (New Style), resolving an employment relationship problem between them.

[2] Mr Anderson applied to the Authority for a compliance order on the basis New Style had not made payments due to him under the ROS. While the payments have since been made, Mr Anderson has asked that a penalty be imposed on New Style to address the breach(es), and for some or all of it be payable to him.

[3] New Style acknowledges breaches occurred, but submits no penalty should be imposed, but if one is, a small penalty only would be warranted.

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

The Authority's process

[5] This parties agreed this matter could be determined on the papers. The Authority has received and considered affidavit evidence from Mr Anderson and New Style's director and shareholder Wayne Pavey, together with the statements of problem and in reply, and the parties' written submissions.

[6] 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 issue

[7] The issues requiring investigation and determination are whether New Style, having breached the terms of the ROS, should be liable for a penalty, and if so, whether any part of such penalty should be made payable to Mr Anderson.

Background

[8] On or about 29 September 2025 the ROS was signed by both Mr Anderson and New Style and was certified by a mediator pursuant to s 149 of the Act.

[9] Under clause 2 of the ROS, New Style agreed to pay to Mr Anderson the sum of $7,000 pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000 ("the Act"). It was agreed that this amount would be paid by way of direct credit to Mr Anderson's bank account in two equal instalments as follows:

(a) Payment 1: $3,500 on or before 24 October 2025
(b) Payment 2: $3,500 on or before 24 November 2025.

[10] Having not received Payment 1, Mr Anderson raised the issue with his representative, who on 28 October 2025, contacted New Style's former representative, querying why payment had not been made. That representative responded by email

explaining that New Style did not have the means to make the payments and that liquidation was being considered.

[11] Despite this, Mr Anderson's representative received payment of its invoice to New Style for an agreed contribution to costs on 30 October 2025. That costs amount was paid 13 days late.

[12] Mr Anderson says New Style had his bank account details from his period of employment, into which New Style could make payment directly. For its part, New Style says it did not retain Mr Anderson's bank account information and details after his employment ended by way of redundancy.

[13] In an application lodged with the Authority on 3 November 2025, Mr Anderson sought compliance with the remaining terms of the ROS, and a penalty.

[14] New Style's director, Mr Pavey, also says he believed there was a problem with the mediator certification on the document. He now acknowledges, once the Authority clarified it saw no issue with the certification, that paid amounts due under the ROS.

[15] New Style subsequently made two payments of $3,500 on 20 December 2025 and 22 January 2026, respectively. It says due to the difficult economic circumstances it was facing, it had to rely on cash flow income in the month of December to pay these amounts, relying on receiving monthly debtor payments coming in.

[16] The two payments due to Mr Anderson were paid to the firm of Mr Anderson's representative, rather than directly to him. While there appears to be no dispute New Style was notified of Mr Anderson's nominated bank details on 19 or 20 November 2025, payments due to him were paid to his representative's firm. New Style says this was due to an administrative error and therefore unintentional.

Penalty for a breach of an ROS

[17] Section 149(4) of the Act provides that a person who breaches an agreed term of settlement certified by a mediator is liable for a penalty. Section 135(2)(b) provides that under the Act a company is liable to a penalty up to $20,000 for a breach.

[18] The ROS was certified by an MBIE mediator pursuant to s 149 of the Act. It is clear New Style breached the agreed terms by not making the three agreed payments on time.

Quantum of penalty

[19] 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.[1]

[20] While the breach relates to three separate payments due under the ROS - two of which were paid incorrectly to Mr Anderson's representative's account rather than directly to him as agreed - I consider the actions should be considered a single breach for the purposes of penalty.

[21] I consider the following as being relevant when assessing New Style's breach:

(a) 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. As a matter of public policy, it is necessary to uphold the integrity of full, final, binding and enforceable agreements allowed under s 149 of the Act. Given the purposes of the Act, the imposition of penalty provides specific and general deterrence to New Style and others party to agreements under s149.
(b) While payments due to Mr Anderson were not paid directly to him, it is not clear this resulted in harm to Mr Anderson. I accept New Style's evidence this was inadvertent.
(c) The breach involved three late payments, to both Mr Anderson and his representatives. While Mr Anderson's application to the Authority was prompt, it was not obviously premature, as New Style suggests. The breaches were sufficiently significant for Mr Anderson, whose affirmed evidence was that he was relying on the payments being made on time during a difficult period when he was not working. New Style's actions in not making the three payments on time was closer to negligence rather than deliberate or inadvertent conduct. I

[1] 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.

assess the severity of the breaches as relatively minor on an objective basis but significant to Mr Anderson personally.

(d) Payment of all sums due under the ROS have now been made.

(e) There is no evidence of previous breaches.

(f) While New Style has given evidence it was and is experiencing financial difficulty, I am satisfied it has the capacity to pay a penalty at the level I intend to impose.

(g) Penalty amounts should also be consistent with other penalties imposed in similar circumstances. A penalty of $1,000 generally aligns penalty amounts imposed in other determinations.

[22] While penalties are ordinarily payable in full to the Crown the Authority may 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 be paid to Mr Anderson and I set that amount at 75%.

Outcome

[23] Within 14 days of the date of this determination New Style Builders 2021 Limited is ordered to pay without deduction a $1,000 penalty. Of that amount, $750 is to be paid to Slade Anderson, and $250 to the Crown.

Costs

[24] Mr Anderson has been successful before the Authority in his application for a penalty. He seeks costs in relation to this application, which can only be ordered at a modest level in the circumstances. Within 14 days of the date of this determination the Authority orders New Style Builders 2021 Limited to pay Mr Anderson:

(a) $750 in costs; and

(b) $71.55, being the Authority application fee.

Sarah Blick
Member of the Employment Relations Authority