

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 275
3440124

BETWEEN SUZANNE SMITH
Applicant

AND WATERHOLE SWIMMING
CENTRE LIMITED
First Respondent

AND JUDITH WRIGHT AND
GWYNNETH RYAN
Second Respondent

Member of Authority: Helen van Druen

Representatives: Rachael Chandra, counsel for the Applicant
Judith Wright and Gwynneth Ryan for the Respondent

Investigation Meeting: On the papers

Submissions received: Up to 17 April 2026 from the Applicant
7 April 2026 from the Respondents

Determination: 4 May 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Suzanne Smith was employed by Waterhole Swimming Centre Ltd (Waterhole). In 2025, Ms Smith entered into a Record of Settlement (ROS) with Waterhole. The ROS was signed by the parties on 19 August 2025 and certified by a mediator under s 149 of the Employment Relations Act 2000 (the Act) on 20 August 2025. Ms Smith says that Waterhole has not complied with the agreed terms in the ROS and seeks to enforce them by this application for a compliance order. Ms Smith further seeks interest on the amount owed plus penalties and costs.

[2] Waterhole accepts that the amount claimed is owed in accordance with the ROS. It says that it intends to pay the amount owed but cannot do so until building repairs are

completed and the insurance claim paid. They acknowledge while this is irrelevant to the claim it is the reason why payment has not been able to be made.

[3] Although the ROS included a confidentiality clause, it is necessary for this determination to refer to details of relevant terms.

The Authority's investigation

[4] In a case management call with the parties on 2 March 2026 and subsequent directions issued, options for hearing this matter were explained to the parties and both parties agreed that this matter could be determined 'on the papers'. While initially separating Ms Ryan and Ms Wright as second and third respondent, I revert to the intituling in the statement of problem, referring to both directors as the second respondent.

[5] Submissions were timetabled for 16 March 2026 for Ms Smith and 30 March 2026 for both respondents with any reply submissions by 10 April 2026. Submissions were received from Ms Smith on 20 March and 17 April 2026 and from Ms Ryan for the respondents on 7 April 2026.

[6] 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 issues

- [7] The issues requiring investigation and determination were:
- a. Whether a compliance order under s 137 of the Act should be made as provided by s 151 of the Act. If so, whether that order should require the full amount of \$34,250 due and payable immediately (as provided within paragraph 10 of the ROS);
 - b. Whether interest is payable on the outstanding amount;
 - c. Whether any penalties should be awarded for breach of the ROS;
 - d. Whether a contribution to legal costs is awarded; and
 - e. Whether Ms Wright and/or Ms Ryan are personally liable for the outstanding monies owed.

Record of Settlement terms

[8] Clause 4 of the ROS provided for Waterhole to pay Ms Smith a total sum of \$36,000.00 by way of four part-payments between 13 October 2025 and 30 April 2026.

[9] Clause 6 of the ROS provided a personal guarantee, jointly and severally by both directors for payment of the above amounts. The specific wording read:

Judith Ann WRIGHT and Gwynneth Betty RYAN, being Directors and Judith Ann Wright being the sole shareholder of the Employer Company and having full knowledge of the breaches of minimum statutory entitlements, agree that they are providing a personal guarantee to pay the sums recorded at clauses 2 to 5 of this Agreement, in the event that, the Employer is unable to meet these payments. Judith and Gwynneth agree that their liability as Personal Guarantors is joint and several. The obligation in this Agreement to pay these amounts will be enforceable on them in accordance with the personal guarantees provided.

[10] Clause 10 of the ROS provided that if any of the amounts were not paid by the due dates, the full balance of the sum would become due and payable immediately.

Agreed facts

[11] It is not disputed that:

- a. The ROS required four payments to be made by Waterhole on 13 October 2025, 22 December 2025, 10 February 2026 and 30 April 2026;
- b. The first payment of \$1,500 was made and received by Ms Smith; and
- c. In the event that Waterhole Swimming Centre Ltd cannot make those payments, Ms Wright and Ms Ryan provided a personal guarantee (jointly and severally) to pay those amounts.

The parties' submissions

Ms Smith's submissions

[12] When the default in the second payment occurred, Ms Smith, through counsel, wrote to Waterhole on 15 January 2026 demanding payment of the full sum. She was entitled to do so in accordance with clause 10 of the ROS.

Waterhole's submissions

[13] In response to the letter of 15 January 2026 from Ms Smith, Ms Ryan stated the reason for the default was the impact on the business of the 2023 Auckland floods, including loss of income and delays by Council "working on our flooding repairs and

compensation”. Ms Ryan requested a two week “reprieve” on the basis that income would be flowing again and the Company would be “back on track”. Ms Ryan also stated that all other payments would be on time.

[14] In submissions to the Authority, Ms Ryan says that a full insurance payout will allow this payment to be made and requested further time to allow the claim to be processed.

Findings

[15] In *Hamilton City Council v Halse*¹ [2022] NZERA 34, the Authority detailed its jurisdiction to issue compliance orders in respect of agreed terms of settlement:

Section 161(1)(n) expressly provides for the Authority to make compliance orders under s 137 of the Act. The provision allows the Authority to order compliance in respect of agreed terms of settlement. The power is reinforced by s 151 of the Act which provides for the enforcement of settlement terms certified by a mediator under s 149(3), and by s 137 which empowers the Authority to order compliance with terms of settlement (as referred to in s 151). These statutory provisions leave me more than satisfied the Authority has jurisdiction to order compliance with a settlement agreement certified under s 149(3) of the Act.

[16] I accept that insurance payments did not occur in the timeframes as expected by Waterhole. While understanding that this may create challenges for Waterhole, the ROS is not conditional upon receipt of insurance money before money is paid to Ms Smith. The ROS is a legally binding and enforceable agreement. In the circumstances, Waterhole’s application for further delaying payment is not accepted.

Compliance order to be issued

[17] Section 137(1)(a)(iii) of the Act gives the Authority power to order compliance where a person has not complied with any terms of settlement signed under s 149 of the Act. Having found the ROS has been breached, a compliance order should be issued to prevent recurrence.

[18] Under clause 6 of the ROS Ms Ryan and Ms Wright personally guaranteed payment if the company was unable to meet them. However, neither Waterhole nor Ms Ryan or Ms Wright have made any further payment since the initial \$1,500 payment amount.

¹ *Hamilton City Council v Halse*¹ [2022] NZERA 34 at [37].

[19] I am satisfied that it is appropriate to order Ms Ryan and Ms Wright to comply with their personal guarantee to prevent further non-observance of the payment terms in the record of settlement.

Consideration of Penalties

[20] Under s 133 of the Act, the Authority has jurisdiction to consider a penalty where there is a breach of any provision of the Act for which a penalty in the Authority is provided in the particular provision. As Waterhole breached the terms of settlement and s 149(4) of the Act applies, it is appropriate to consider a penalty.

[21] 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.²

[22] While the breach relates to three separate payments due under the ROS, I consider the actions should be considered a single breach for the purposes of penalty.

[23] I consider the following relevant factors when assessing that breach:

- a. The object of the Act is to ensure that employment relationships are built on trust and confidence but also on a legislative requirement for good faith behaviour.³ At least in part, monies agreed under the ROS relate to unpaid statutory minimum wage and leave entitlements.
- b. 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 a penalty provides specific and general deterrence to Waterhole and others who enter into agreements under s149 of the Act.
- c. Waterhole knew the effects of the 2023 floods and entered into the ROS in August 2025 with that knowledge.
- d. Waterhole agrees it has intentionally breached the ROS and has made no attempt to pay any portion of the monies owed to Ms Smith since the initial payment, despite assurances in January 2026.

² 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.

³ Employment Relations Act 2000, s 3.

- e. Waterhole provided extensive documentation to verify the extent of the building works and it is accepted that timeframes for the work are dependent on external third parties.
- f. There is no evidence of previous breaches.
- g. While Waterhole has submitted that it has no ability to make payment, I am satisfied that it has the capacity and resources to pay a penalty. Ms Smith should not be disadvantaged because of delays by a third party unrelated to the ROS or Ms Smith.
- h. Ms Smith submits that she continues to suffer financially from the loss of this money and also emotionally as she fights to receive money owed to her. Despite issues with payment of wages during her employment, she trusted that the settlement agreement would resolve matters so she could move on. That has not occurred. In her opinion, this repeats the same conduct and behaviour she experienced during her employment.

[24] Based on the factors in the Act and in *Preet*, I conclude that based on the severity of the breach by Waterhole an appropriate penalty is \$1,500.

[25] Penalties are ordinarily payable in full to the Crown, however the Authority may can order part of a penalty to be paid to the party impacted by the breaches (giving rise to the penalty). I consider it appropriate to order that half is to be paid to the Crown with the remainder to be paid to Ms Smith.

Interest

[26] Ms Smith is seeking interest on the amount ordered as costs from 14 October 2025 until payment is made in full. By the non-payment, Ms Smith lost the right to use the money owed to her for an extended period and I consider it appropriate that interest is awarded.

[27] Interest on the amount owed is ordered in accordance with Schedule 2 of the Interest on Money Claims Act 2016 from 15 January 2026 (being the date the full debt repayment requirement was initiated) until payment is made in full. A calculator to assist in the calculation of interest is available on the Ministry of Justice website.

Costs

[28] Ms Smith is successful before the Authority in her application for a penalty. She further seeks costs in relation to this application, which will be ordered at a modest level in the circumstances. Invoices were provided showing the amount claimed for legal costs significantly exceeds any notional tariff amount and I am satisfied that it is prudent to resolve the matter of costs in this determination.

[29] A modest award of \$2,500 is ordered as a contribution to Ms Smith's costs incurred seeking to recover the money owed to her.

Summary and Orders

[30] Within 14 days of the date of this determination, Waterhole is ordered to:

- a. Comply with the record of settlement certified on 20 August 2025, by paying Ms Smith the full remaining amount of \$34,250 to her nominated bank account;
- b. Pay interest on the amount owed in accordance with Schedule 2 of the Interest on Money Claims Act 2016 from 15 January 2026 until payment is made in full;
- c. Pay a penalty of \$1,500 with \$750 to be paid to Ms Smith and \$750 to the Crown.
- d. Pay \$2,500 as a contribution to her legal costs incurred in this application; and \$71.55 reimbursement of the Authority filing fee.

[31] In the event of non-payment of the amounts ordered within 14 days of the date of this determination, this compliance order requires Ms Wright and/or Ms Ryan to comply with their personal guarantee as detailed in the ROS to prevent further non-observance of the payment terms in the record of settlement.

[32] I draw to the parties' attention the provisions of s 140(6) of the Employment Relations Act 2000 setting out the powers available to the Employment Court on further application, should Waterhole, or Ms Wright and/or Ms Ryan not comply with the Authority's compliance orders.

Helen van Druten
Member of the Employment Relations Authority