

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 277
3356723

BETWEEN CHERVON NZ SUBSIDIARY
 LIMITED
 Applicant

BENJAMIN DAVID ADAMS
Respondent

Member of Authority: Marija Urlich

Representatives: Nivonne Enniss, representative for the Applicant
 Respondent in person

Investigation Meeting: 11 September 2025

Submissions and Up to and including 15 April 2026, from Applicant
information received: Up to and including 14 April 2026, from the Respondent

Determination: 4 May 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Chervon NZ Subsidiary Limited (Chervon) seeks to enforce by way of compliance order a record of settlement entered with its former employee Benjamin Adams and certified by a mediator. It also seeks a penalty and order as to costs against Mr Adams.

[2] Mr Adams did not lodge a statement in reply within the statutory time period in response to the statement of problem of which I am satisfied he was served. He has engaged with the Authority by email indicating he would pay or had paid the sums agreed in the record of settlement. The information before the Authority is Mr Adams has not made payments as agreed under the terms of the record of settlement and those sums remain outstanding.

The Authority's investigation

[3] Directions dated 27 August 2025 (the directions), a notice of investigation meeting and audio-visual link were served on the addresses provided by Mr Adams in his correspondence with the Authority including those accepting service. In the directions the Authority identified the issues to be investigated and determined an investigation meeting date. The directions also requested the parties file any relevant information by 11 September 2025.

[4] On the morning of the investigation meeting Mr Adams emailed the Authority requesting it be rescheduled because he had double booked himself. The request was declined because insufficient information to assess the request had been provided. At the scheduled start time of the investigation meeting Ms Evans for Chervon was in attendance and Mr Adams was not. At my direction the Authority officer emailed the parties advising the investigation meeting would commence at 3.30pm to accommodate possible lateness on Mr Adams behalf. At 3.30pm the investigation meeting commenced. Mr Adams was not in attendance and had not responded to the Authority's email advising of the delayed start. At the investigation meeting Ms Evans provided information to the Authority in support of Chervon's claim to enforce the record of settlement, penalties and costs.

[5] Subsequent to the investigation meeting further information was sought from the parties as to the date on which the sums sought became due and owing under the record of settlement. Mr Adams then indicated his intention to resolve matters with Chervon. It was appropriate for the parties to have an opportunity to seek to resolve this matter themselves. However, this does not appear to have been possible, and it is appropriate to determine the matter on the information before the Authority. For completeness, the parties were provided a further opportunity to provide relevant information by 29 April 2026.

[6] 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 the information received.

Issues

- [7] The issues for investigation and determination are whether:
- (i) a compliance order is made against Benjamin Adams to comply with the record of settlement;
 - (ii) a penalty is ordered against Benjamin Adams a portion of which paid to Chervon; and
 - (iii) either party is entitled to an award of costs.

The record of settlement

[8] Clause 4 of the record of settlement provides that by 31 October 2024 Mr Adams shall pay Chervon \$10,000 as a lump sum payment in recognition of financial losses sustained by Chervon because of his actions.

[9] Clause 5 of the record of settlement provides Mr Adams agreed to pay Chervon \$20,000 plus GST (a total of \$23,000) by way of an agreed payment plan towards legal fees incurred in respect of matters concerning Mr Adams' conduct during his employment. Clause 5 also includes the bank account details into which the settlement sums were to be paid.

[10] Clause 6 of the record of settlement provides if by 30 October 2025 Mr Adams defaulted on the amount agreed to be paid towards Chervon's legal fees then he would be required "...to pay to [Chervon] the full amount of legal fees by Thursday 18 December 2025". The full amount of legal fees is recorded in the record of settlement as \$29,971.30.

[11] The record of settlement was signed by Mr Adams and a representative of Chervon on 29 October 2024. On 30 October 2024 the record of settlement was certified by a mediator pursuant to s 149 of the Act.

[12] The record of settlement provided the terms and conditions were final, binding on and enforceable, and were to remain confidential between the parties except for enforcement purposes.

[13] The information before the Authority establishes Mr Adams has not paid sums he agreed to pay Chervon under the terms of the parties' record of settlement and \$39,971.30 remains outstanding.¹

Compliance order – Benjamin Adams

[14] Section 137(1)(iii) of the Act empowers the Authority to order a party to comply with any record of settlement which s 151 of the Act provides may be enforced by a compliance order. Section 151 applies to any agreed record of settlement enforceable by the parties under s 149(3) of the Act.

[15] Mr Adams has corresponded with the Authority repeatedly by email advising of his intention to pay the record of settlement sums and seeking confirmation of the amount owed, the account details into which the sums should be deposited and most recently advising the payments had been made.² Mr Adams has more likely than not had all the relevant information as to the amount of the settlement and how to make the payments to Chervon from at least the date the parties entered the record of settlement because all that information is contained in that document. The information has been subsequently provided to Mr Adams by way of letters of demand, served on him through these proceedings by way of the statement of problem and subsequently emailed to him by Chervon copying the Authority.

[16] Chervon has advised it has not received any payments under the record of settlement. Mr Adams has represented twice to the Authority that payments have been made but has not provided proof of payment including on request of the Authority and in the face of Chervon's advice it had not received any such payments advice it subsequently confirmed.

[17] I am satisfied Mr Adams has failed to comply with the record of settlement because he has not paid sums as agreed under the terms of the parties' record of settlement and is in breach of obligations freely entered under that record of settlement.

¹ Refer evidence and information from Chervon 11 September 2025 to 15 April 2026.

² 21 May 2025, 15 September 2025, 20 January 2026 and 9 and 14 April 2026.

[18] Mr Adams has provided insufficient information about matters which may have contributed to or caused his non-compliance with the record of settlement. I am satisfied he has had a fair opportunity to do so.

[19] Mr Adams has failed to meet his obligations under the record of settlement. In all the circumstances it is appropriate to exercise my discretion under s 137(1)(b) of the Act to order compliance with the outstanding sum of \$39,971.30.

[20] Within 21 days of the date of this determination Mr Adams is ordered to comply with the record of settlement and pay Chervon without deduction \$39,971.30.

[21] Imposition of a compliance order is a serious matter. Should Mr Adams fail to comply with the compliance order as set out above, Chervon is entitled to pursue the breach in the Employment Court or the District Court. The Employment Court has powers to impose a fine not exceeding \$40,000, order property to be sequestered, or impose a sentence of imprisonment not exceeding 3 months³. Alternatively, a certificate of determination may be obtained from the Authority and enforcement obtained in the District Court.

Penalty

[22] Section 149(4) of the Act enables a party to seek the imposition of a penalty in respect of any established breach of a corresponding record of settlement. The imposition of a penalty is discretionary and is generally imposed for the purpose of punishment as well as discouragement of others. A single breach of a settlement agreement by an individual may attract a penalty up to \$10,000 and for a company a penalty not exceeding \$20,000 may be awarded for a solitary breach.⁴

[23] Chervon says a penalty should be imposed against Mr Adams for breach of the record of settlement and any penalties awarded or a portion thereof should be paid to it - Mr Adam's breach of the record of settlement undermines the integrity and security of s 149 settlement agreements which are intended to give parties certainty and finality, that he is solely responsible for the knowing breach of the record of settlement, the nature and the extent of the loss incurred by Chervon and the benefit to Mr Adams in

³ Section 139 and 140(6) Employment Relations Act 2000

⁴ Employment Relations Act 2000, section 135(2)(a) and (b).

retaining the settlement monies over an extended period. Given these factors a penalty is appropriate.

[24] As a matter of public policy, in this case the imposition of a penalty against Mr Adams is necessary to uphold the integrity of the full, final, binding and enforceable agreements allowed under s 149 of the Act.

[25] The record of settlement records Mr Adams understood the binding and enforceable nature of the record of settlement, and he must be taken to have been aware of his obligations under the record of settlement. In correspondence with the Authority Mr Adams accepts he has not met the payment schedule as agreed. There is no basis on which to reasonably conclude that Mr Adam's breaches of the record of settlement were inadvertent, minor or technical. He has provided no information as to why he has not made the payments as he agreed and has been given a reasonable opportunity to do so.

[26] Chervon has been put to considerable inconvenience and used significant resources to enforce the record settlement. A search of the relevant databases has not revealed previous proceedings for similar breaches involving Mr Adams.

[27] 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.⁵ Taking all the factors into account Mr Adams is liable for a penalty of \$2,000, which is within the range of penalties currently imposed for failure to pay monies due under a record of settlement and is proportionate to the seriousness of the breach and harm caused.

[28] In the circumstances of this matter it is just for half the penalty sum (\$1,000) to be paid to Chervon and the balance (\$1,000) to be paid to the Crown which Mr Adams is to pay within 21 days of the date of determination

Interest

[29] The Authority has the power to award interest under clause 11 of the Second Schedule of the Act of its own motion. Interest is to reimburse someone for the loss of use of monies to which there is an established entitlement. The entitlement to the

⁵ 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.

outstanding settlement sums has been established as has the date on which that entitlement arose being the date provided in the record of settlement of 18 December 2025.

[30] It is appropriate where a person has been deprived of the use of money to make an award for interest. Mr Adams is required to calculate and pay to Chervon interest on the sum outstanding from date of default under the record of settlement for which compliance orders have been made until the amounts are paid in full. For the avoidance of doubt the sum outstanding is \$39,971.30 and the date of default is 18 December 2025. Interest is payable in accordance with Schedule 2 of the Interest on Money Claims Act 2016. A calculator to assist in the calculation of interest is available on the Ministry of Justice website.

Summary of orders

[31] Within 21 days of the date of this determination Benjamin Adams is ordered to comply with the record of settlement and make the following payments without deduction:

- (i) \$39,971.30 in total to Chervon NZ Subsidiary Limited;
- (ii) pay a \$2,000 penalty half of which is to be paid to Chervon NZ Subsidiary Limited and half to the Crown.

[32] Benjamin Adams is to calculate and pay interest as described in [30] above.

Reimbursement of filing fee

[33] It is fair and reasonable that Chervon recover the filing fee of \$71.55 incurred in lodging this application. Benjamin Adams is to pay Chervon the filing fee of \$71.55 within 21 days of the date of determination. The Authority understands Chervon has not incurred the costs of external representation in this matter.

Marija Urlich
Member of the Employment Relations Authority