

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2026] NZERA 308  
3433284

BETWEEN

**RICARDO SIMARI**  
Applicant

**THE OLIVE PRESS LIMITED**  
(In liquidation)  
First Respondent

**RODNEY JAMES LINGARD**  
Second Respondent

**KATRINA MARY BACH**  
Third Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Saadi Radcliffe, counsel for the Applicant  
Rod Lingard for the Respondents

Investigation Meeting: On the papers

Determination: 19 May 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Ricardo Simari applied to enforce a record of settlement between him and his former employer The Olive Press Limited (in liquidation), Rodney Lingard and Katrina Bach.

[2] After Mr Simari's statement of problem was lodged in the Authority The Olive Press Limited (the Company) went into voluntary liquidation on 4 May 2026. In accordance with s 248 (c) of the Companies Act 1993 the proceeding against the Company is stayed unless leave is given by the Liquidator or a court orders otherwise.

[3] Mr Lingard and Ms Bach were the directors of the Company and are shareholders through another company. Mr Simari, the Company, Mr Lingard and Ms Bach entered into a settlement agreement signed by a Ministry of Business, Innovation and Employment mediator on 14 March 2025.

[4] The settlement agreement contains personal guarantees from Mr Lingard and Ms Bach. They become personally liable for any unpaid amounts the Company does not pay in accordance with the settlement agreement.

[5] The settlement agreement also contains agreement that Mr Lingard and Ms Bach will pay Mr Simari for any reasonable expenses incurred by him in the event enforcement action was necessary.

[6] On 31 August 2025, the Company failed to pay Mr Simari the last instalment of \$5,000.00 by the agreed date. The settlement agreement provided payment schedule with six payments to be paid on specified dates from 31 March 2025 to 31 August 2025.

[7] Mr Simari seeks an order Mr Lingard and Ms Bach comply with the personal guarantees recorded in the settlement agreement and the agreement to indemnify Mr Simari for reasonable expenses incurred with enforcement. Mr Simari has incurred additional costs of \$1,300.00 (plus GST) and disbursements and says these are reasonable and modest in the circumstances.

[8] Mr Simari also seeks a penalty in the amount of \$7,500.00 against Mr Lingard and a penalty in the same amount against Ms Bach for their breaches and interest on the unpaid amount because Mr Simari has lost the use of that money from 31 August 2025 which was the date it became due.

### **The Authority's investigation**

[9] The Respondents lodged a statement in reply but did not attend the case management conference (CMC) on 5 March 2026. Mr Lingard, representing all three Respondents, advised after the CMC why he did not attend the CMC and confirmed he remained available to act on or respond to any orders or directions from the Authority in relation to this matter.

[10] On 5 May 2026, a Notice of Direction was issued recording the Authority's intention to hear the matter on the papers. The Respondents' submissions were to be lodged and served by 17 April 2026.

[11] On 20 April 2026, Mr Lingard emailed the Authority seeking adjournment of these proceedings until 30 April 2026 to allow the Respondents to make good on their "original undertakings". He also recorded the Respondents acceptance they were in default of the settlement agreement and did not dispute the amount owing but were working hard to resolve the matter without the need for further action.

[12] On 28 April 2026, counsel for Mr Simari strongly opposed the adjournment.

[13] On 29 April 2026, Mr Lingard emailed the Authority and Mr Simari's counsel advising the Company had ceased trading and indicated his preference in light of the business closure to enter into a repayment scheme with Mr Simari to pay the remaining \$5,000.00.

[14] The offer of a repayment scheme was rejected by Mr Simari. The Authority granted an extension to 1 May 2026 for the Respondents to provide submissions.

[15] On 4 May 2026, the Authority and Mr Simari were advised by Mr Lingard The Olive Press Limited had been placed in liquidation. Mr Lingard suggested these proceedings be adjourned pending the outcome of liquidation to avoid Mr Lingard and Ms Bach's rights being prejudiced. It was not stated what the prejudice was.

[16] The Authority advised it was still waiting for submissions. A submission was lodged on 5 May 2026 from Mr Lingard and on behalf of Mr Lingard and Ms Bach.

## **Background**

[17] The settlement agreement arose from Mr Simari's earlier proceeding lodged in the Authority in respect of unpaid minimum entitlements. The matter was settled between the parties by way of the settlement agreement. The Company was to pay Mr Simari \$25,000.00 in unpaid wages plus the sum of \$5,000.00 plus GST as a contribution to legal fees.

[18] The total amount was to be paid in six instalments with the final payment for unpaid wages due on or by 31 August 2025. It is the final amount Mr Simari now seeks

orders in relation to and asks that it be increased by \$1,300.00 (plus GST) and disbursements in light of the indemnity clause in the settlement agreement for costs incurred by Mr Simari from enforcement of the settlement agreement.

[19] The personal guarantee in cl 4 was set out in these terms:

Personal guarantee

4. If the Employer does not pay the amount owed as set out in clause 1 in accordance with clause 2 and 3, Rodney and Katrina immediately become jointly and severally liable for the amount or unpaid part of the amount.

[20] The indemnity in cl 7 was set out in these terms:

Enforcement

7. If the Employee is required to take enforcement action in respect of the performance of obligations by the Employer, Rodney or Katrina (together “the respondents”), each of the respondents agree to indemnify the Employee for his reasonable legal fees and any other expenses or losses incurred.

## **Submissions**

[21] Mr Lingard accepts the final instalment the Company agreed to pay in the amount of \$5,000.00 was due on 31 August 2025 and it failed to pay that amount. It is accepted that was a term of the settlement agreement and that the agreement is final, binding and enforceable by the parties. It explained that due to withdrawal of investment support the Company had no choice other than to cease trading on 27 April 2026.

[22] Mr Lingard submitted his personal guarantee and that of Ms Bach should not be enforced unless the Liquidator agrees or there are High Court orders regarding the continuance of these proceedings. In the alternative a monthly repayment schedule was requested.

[23] He also submitted a penalty would not be appropriate given the circumstances of this matter and there should be no order for costs because Mr Lingard and Ms Bach are no longer represented.

[24] On behalf of Mr Simari it is submitted orders are necessary requiring Mr Lingard and Ms Bach, who have been in breach of their personal guarantees since 31 August 2025, to comply with the record of settlement and pay the final instalment which The Olive Press failed to pay.

[25] Costs are also sought and have increased given the additional work involved since 31 August 2025. The submission that costs be avoided because Mr Lingard and Ms Bach are no longer legally represented is resisted strongly by Mr Simari given their agreement to pay indemnity costs is recorded in the settlement agreement. The length of time it has taken for Mr Simari's unpaid wages to be addressed and that fact this has involved the commencement of two proceedings in the Authority were also pointed out. On Mr Simari's behalf it was submitted that this amounts to an invitation to the Authority to ignore the final binding and enforceable terms in the settlement agreement which is misconceived and unlawful.

[26] In addition, since the settlement agreement was signed, Mr Simari has incurred further costs taking steps to recover the unpaid amount and he is now seeking an order for compliance against both Mr Lingard and Ms Bach for \$6,300.00 plus GST and disbursements in accordance with clause 7 of the settlement agreement.

[27] In support of an award of penalties it was submitted the Company deliberately breached the agreement to pay Mr Simari the total amount of unpaid wages. It is relevant that Mr Lingard and Ms Bach are aware of employment law and the obligations on employers to pay wages and statutory entitlements to employees and the importance of compliance with settlement agreements in the employment jurisdiction.

[28] Further they have taken no steps to mitigate the breach or its adverse effects on Mr Simari. Relying on a recent case of *Singleton v Ramp Contracting Ltd (in liq)*,<sup>1</sup> penalties in a sum greater than \$1,500.00 against each of Mr Lingard and Ms Bach are submitted to be appropriate given the alleged deliberate breaches of the settlement agreement.

[29] Mr Lingard on the other hand says that since September 2025 the company had been seeking investment to enable it to pay its creditors including Mr Simari. With a proposed venture collapsing on 27 April 2026, there was no option but to cease trading and the shareholders resolved to place the company into voluntary liquidation. It was submitted a penalty would be not in appropriate in these circumstances.

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<sup>1</sup> *Singleton v Ramp Contracting Ltd (in liq)* [2026] NZERA 220.

[30] Mr Lingard also recorded that the Liquidator had requested the Authority stay these proceedings pending an application for leave to continue although that does not appear to be exactly what the Liquidator's email to the Authority records.

### **Compliance order**

[31] The Company was required to pay Mr Simari \$30,000.00 in five instalments by 31 August 2025. As a result of liquidation all proceedings against the Company are stayed.

[32] While the Liquidator's email to the Authority invited Mr Simari to submit a claim in the liquidation, that can only apply to a claim against the company and not to claims against Mr Lingard and Ms Bach personally. They are parties to these proceedings and the settlement agreement in their personal capacity.

[33] In any event under clause 4 of the settlement agreement Mr Lingard and Ms Bach personally guaranteed the payments if the company was unable to meet them. Mr Lingard and Ms Bach have been required in accordance with the personal guarantee to pay the last instalment of \$5,000.00 since 31 August 2025. That was the date the Company failed to make this payment under the payment schedule set out in the settlement agreement. The Company did not go into liquidation until eight months later.

[34] Mr Lingard and Ms Bach have not made any payments to Mr Simari.

[35] Mr Lingard and Ms Bach agreed to indemnify Mr Simari for his reasonable legal fees and any other expenses or losses incurred.

[36] Clauses 4 and 7 of the settlement agreement are enforceable against Mr Lingard and Ms Bach personally by a compliance order.<sup>2</sup>

[37] It is appropriate to order that Mr Lingard and Ms Bach comply with their personal guarantees to prevent further non-observance of the payment terms in the settlement agreement. While the financial difficulties of the company have been referred to generally, the personal guarantees are recorded in the settlement agreement

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<sup>2</sup> Employment Relations Act 2000, s 151(2)(a).

which is enforceable and binding on the parties. No financial information regarding Mr Lingard or Ms Bach personally was provided to the Authority.

[38] It is also appropriate that the final payment be increased in recognition of the indemnity clause and the fact that enforcement action has been necessary. A statement of problem has been lodged, submissions on behalf of Mr Simari provided, and further submissions after 4 May when the company went into liquidation were lodged. There have also been a number of emails from Mr Lingard seeking adjournments, requesting the Authority stay these proceedings and making an offer to make the payment if a further payment schedule could be entered into which required responses on behalf of Mr Simari.

[39] I decline to make an order for a repayment schedule. Mr Lingard has provided no specific evidence that he or Ms Bach cannot meet the final payment.

### **Penalties**

[40] A penalty is sought by Mr Simari against Mr Lingard and Ms Bach for a breach of the settlement agreement. Given the finding above that Mr Lingard and Ms Bach are in breach of both the settlement agreement they are liable both liable to a penalty. The maximum is \$10,000 in the case of an individual.

[41] The standard of proof for the imposition of a penalty in this jurisdiction is on the balance of probabilities. The primary purpose of a penalty is to punish the wrongdoing and act as a deterrent to further breaches. Penalties can be appropriate for breaches of settlement agreements in order to protect the finality and integrity of s 149 agreements and it is important that parties ought to have confidence in settlement agreements under s 149 of the Act. The breach is ongoing and has been ongoing since 31 August 2025. The nature and extent or involvement in breach and whether breaches were intentional are factors that must be considered by the Authority when deciding whether to award a penalty and the quantum of any penalty.

[42] An extension was granted by the Authority to allow Mr Lingard and Ms Bach to make good on the personal guarantees but shortly after the company ceased trading and then was placed in voluntary liquidation.

[43] Taking into account the relevant matters the Authority must have regard to when awarding penalties a penalty would be appropriate in order to protect the finality and integrity of s 149 agreements.

[44] 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 the amounts due under the settlement agreement were unpaid wages. The final determination on penalty is adjourned in accordance with s 138(5) of the Act to enable compliance with the order below and leave is reserved for Mr Simari to return to the Authority for a determination on penalties.

### **Interest**

[45] The Authority has a discretion to award interest in any claim for the recovery of money.<sup>3</sup> As Mr Simari has in effect lost the benefit of the use of unpaid wages as recorded in the settlement agreement, it is appropriate to award interest. Mr Lingard and Ms Bach will be ordered to pay Mr Simari interest as calculated under the Interest on Money Claims Act 2016, from 31 August 2025 through to the date of payment. This can be calculated using the Civil Debt Interest Calculator.

### **Summary of orders**

[46] Compliance is ordered under s 137(2) of the Act.

[47] Within 28 days of this determination Rodney Lingard and Katrina Bach must comply with clauses 4 and 7 of the settlement agreement and pay Ricardo Simari \$5000.00 and \$6,500.00 being reasonable legal fees and any other expenses or losses incurred by Mr Simari.

[48] Leave is reserved to return to the Authority for consideration of penalties.

Sarah Kennedy-Martin  
Member of the Employment Relations Authority

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<sup>3</sup> Employment Relations Act 2000, sch 2 cl 11.