

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2026] NZERA 314  
3353320

BETWEEN                      LEE MARK POWNALL  
Applicant

AND                              HUTT VALLEY YOUTH  
HEALTH TRUST  
Respondent

Member of Authority:        Geoff O’Sullivan

Representatives:             Lee Pownall, For Self  
Frances Lear, counsel for the Respondent

Investigation Meeting:      2 December 2025 at Wellington

Submissions and other  
information received:        Up to and including 15 May 2026

Determination:                22 May 2026

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     On 7 June 2024, Mr Pownall entered into a Record of Settlement (RoS) with Hutt Valley Youth Health Trust (Vibe). The RoS was completed in terms of s 149 of the Act and was signed by a mediator employed by the Ministry of Business Innovation and Employment (MBIE). Mr Pownall says Vibe breached the terms of the RoS by delaying sending him an agreed certificate of service, refusing to provide an agreed reference, acting in bad faith, being guilty of fraud and misusing the RoS to cover a breach of the Privacy Act. He says Vibe also forced him into signing the RoS through duress.

[2]     Mr Pownall seeks the following:

- (a)     Compensation for lost earnings totalling \$82,400;

- (b) Compensation for emotional harm caused by the breaches and the alleged bad faith actions;
- (c) A compliance order requiring Vibe to provide a written reference in good faith;
- (d) A declaration that the provision in the Agreement relating to privacy is void;
- (e) A penalty for a breach of bad faith;
- (f) Costs.

[3] Vibe rejects the claims saying there has been no breach of the record of settlement and in any event there is no basis for any of the claims including duress. It says the RoS is final and binding and can only be brought before the Authority for enforcement purposes.

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

[4] At the investigation meeting I heard evidence from Mr Pownall and from Vailoa Tuita'Alili, the Chair of the Board for Vibe. Evidence was given on oath or affirmation.

[5] 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 evidence and submissions received.

#### **Background**

[6] Mr Pownall commenced employment with Vibe as its chief executive in February 2024. Concerns were raised about Mr Pownall's leadership, communication, and management style, which although untested, led to a meeting between the Chair and Mr Pownall to resolve the issues.

[7] From Mr Pownall's perspective, he was committed to the role and receiving positive feedback from external partners.

[8] In any event, there were a number of communications between the parties including a letter dated 24 May 2024 headed "without prejudice" which was produced to the Authority by Mr Pownall. Following this letter, there were some further

negotiations which changed the original proposal for resolution of the issues between the parties. These were negotiated by Mr Pownall and appear to be in his favour.

[9] On 7 June 2024, the Record of Settlement was signed and later certified by a mediator from MBIE.

### **Mr Pownall's claims**

#### *S 149.3 of the Act*

[10] In general, s 149 Agreements are final and binding on, and enforceable by the parties. They cannot easily be set aside and would generally come before the Authority or the Court for enforcement purposes only.

[11] Some of Mr Pownall's claims could relate to enforcement, including the allegations of a delayed certificate of service and a refusal to provide an agreed reference, but others such as the allegation of fraud and duress and misuse of a Record of Settlement are more problematic. The Court has said there may be circumstances where it would be permissible to go behind a Settlement Agreement especially in cases of duress. Duress is usually understood as the imposition of illegitimate pressure by threats to coerce a party to enter into a contract.

[12] The Court of Appeal in *McIntyre v Nemesis DBK Limited*<sup>1</sup>, observed that agreements procured by duress are voidable by the coerced party unless the agreement has been affirmed.

[13] In discussing duress, the Court noted that duress involves two fundamental elements, first there must be the exertion of illegitimate pressure, and secondly the imposition of that pressure must have compelled the victim of duress to enter into the agreement.

#### *Delayed certificate of service*

[14] The RoS provided that if requested, Vibe would provide Mr Pownall with a certificate of service. Sometime after the RoS was signed, Mr Pownall requested the certificate and the evidence shows that this was sent to him on 8 July 2024.

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<sup>1</sup> *McIntyre v Nemesis DBK Limited* [2009] NZCA 329.

[15] In November 2024 Mr Pownall emailed Vibe claiming it had not provided him with the certificate and sought damages and loss of earnings in excess of \$80,000.

[16] Vibe's evidence was that between 8 July and 12 November 2024 Mr Pownall did not contact them to say he had not received the certificate.

#### *Refusal of agreed reference*

[17] Mr Pownall says Vibe refused to provide him with a written reference. In his email dated 29 November 2024, Mr Pownall advised, amongst other things:

The RoS includes an agreement for Vibe to provide a reference upon request. While I no longer require a written reference (as I am happy with the certificate of service in the meantime), I ask for written confirmation that Vibe will honour this agreement and provide a reference in good faith when required. ...

[18] However, clause 7 of the RoS requires Vibe to provide a verbal reference if requested. There was no evidence that a request has ever been made. In any event, there was no requirement contained in the RoS requiring Vibe to provide a written reference.

#### *Bad faith / fraud*

[19] Mr Pownall says Vibe is guilty of bad faith and fraud primarily because of its failure to adhere to the terms, including delays in providing the certificate and the refusal to provide a reference. It seems the fraud is based on the allegation that Vibe misrepresented that a certificate of service had been sent and later backtracking on this claim.

[20] Mr Pownall, however, had no evidence, other than his claim, that Vibe in any way misrepresented the position regarding the provision of a certificate of service. Indeed, the email evidence shows Mr Pownall was sent his certificate of service. When he advised Vibe that he had not received it, Vibe resent it. There was no misrepresentation by Vibe.

#### *Misuse of RoS – Privacy Act?*

[21] Mr Pownall has claimed that the RoS contained a clause which attempted to restrict statutory rights he may have had under the Privacy Act 2020. His claim in this regard relates to the provision contained in clause 14 of the RoS. Amongst other things,

the clause provided that each party releases the other from any further liability for such claim, issues, or matters. The clause went on to say:

This includes the recent request made by the employee pursuant to the Privacy Act 2020.

[22] The plain reading of clause 14 of the RoS is that any liability Vibe had in terms of Mr Pownall's request under the Privacy Act 2020 was resolved by the RoS.

[23] The clause cannot offend the Privacy Act 2020 because if he so wished, there would appear to be nothing to stop Mr Pownall making a further request. The provision only resolved the request that Mr Pownall had made prior to entering into the RoS. It is difficult to see how there can be a breach of the Privacy Act under these circumstances.

### *Duress*

[24] Mr Pownall has claimed he entered into the RoS under duress. While the documentation filed would indicate this was extremely unlikely, Mr Pownall has been unable to produce any evidence that he was under duress. He was given the opportunity to take advice before any agreement to resolve his grievances was entered into. Further, no issues of duress were raised in the Statement of Problem but he says in his evidence he signed the RoS under duress while medically unwell, unsupported, and unaware of the specific concerns allegedly raised against him (by Vibe prior to settlement). However, he made no attempts after signing the RoS to contact Vibe and say he had been under duress. Indeed, he accepted the payments due under the RoS with no comment. Later, he engaged in correspondence regarding the provision of the certificate of service. At no time did he raise duress and it was not until 2 October 2025 was there any mention of duress.

[25] In paragraph 22 of his statement dated 2 October 2025, Mr Pownall, in referring to the without prejudice settlement offer of 20 May 2024, says:

Although headed "without prejudice," the letter was in effect a threat – resign or face suspension and investigation. I rely on this letter as evidence of duress and constructive dismissal.

[26] The letter is simply not evidence of duress and in any event, Mr Pownall at no point protested when he entered into the RoS. He did not advise Vibe that he felt under duress. After entering into the RoS, he could have taken steps to raise duress but instead

he did the opposite and accepted the payments due to him under the RoS. It was only later, in 2025, that the issue of duress was raised and, as indicated earlier, was clearly linked to the without prejudice settlement offer which, after negotiation and change, Mr Pownall agreed to settle his grievances with Vibe.

## **Conclusions**

[27] Mr Pownall's claims fail. Hutt Valley Youth Health Trust has complied with the terms of the Record of Settlement it entered into with Mr Pownall. I find, for the reasons outlined above, Mr Pownall did not sign the Record of Settlement under duress. Further, after entering into the agreement, Mr Pownall expressly sought Vibe's compliance with its terms. It follows therefore, there are no grounds on which the Record of Settlement could be set aside.

## **Costs**

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

[29] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Hutt Valley Youth Health Trust may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Mr Pownall 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.

[30] 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>2</sup>

Geoff O'Sullivan  
Member of the Employment Relations Authority

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<sup>2</sup> For further information about the factors considered in assessing costs see:  
[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)