

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2026] NZERA 63

3349360

BETWEEN

PETER THOMAS FINEGAN  
Applicant

AND

THE ELECTRICAL CONTRACTORS  
ASSOCIATION OF NEW ZEALAND  
INCORPORATED  
Respondent

Member of Authority:       Antoinette Baker

Representatives:           Applicant in person  
                                  Maria Austen for Respondent

Investigation Meeting:      23, 24 September 2025 in Christchurch

Last information received:   6 November 2025

Determination:              10 February 2026

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**DETERMINATION OF THE AUTHORITY**

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**Anonymisation of names**

[1] I invited written submissions in relation to non-publication and received these. Mr Finegan opposed non-publication. The respondent did not oppose but did not seek it. I considered these submissions.

[2] While I do not order non-publication, I have not identified a non-party 'group' being a business group I will refer to by using the random letter of H or 'H group'. I also do not identify the one summonsed witness who is the sole director of Mr Finegan's subsequent employer to ME. While I have named other witnesses, the summonsed witness did not choose to appear in these proceedings, and I need to reference things in this determination that relate

to a different employment relationship the end of which is apparently disputed and is not being investigated here. Accordingly, I use randomly selected letters to identify the summonsed witness as XP and its associated corporate entity as X Ltd.

### **Employment Relationship Problem**

[3] This is an application for penalties for alleged breaches of a Record of Settlement (ROS) under s 149 of the Employment Relations Act 2000 (the Act). The parties to the ROS are the applicant, Mr Finegan and his former employer, the respondent (ME), also known as Master Electricians<sup>1</sup>.

[4] Mr Finegan claims that ME breached the ROS in relation to agreed terms of confidentiality (the existence of the ROS to be kept confidential) and non-disparagement. He says he was disparaged by things said to the sole director of his subsequent employer about him by those with dual links to ME and H group, the latter of which had a long standing commercial relationship with Mr Finegan's subsequent employer, X Ltd. Mr Finegan says that those with dual links told his subsequent employer that an ME reference for Mr Finegan was a 'lie' and that if it employed Mr Finegan to deliver its services to H or continued to employ him, the long standing commercial contract would end. Mr Finegan says the breaches adversely affected the relationship with his subsequent employer X Ltd and XP to the effect he resigned. He also believes the breaches will affect his ability to gain further employment.

[5] One of the ME elected board members is Mr Michael Barr. Mr Barr is also a business owner within H group. Mr Finegan also brings an application for penalties for the same breaches of the same ROS under s 149(4) of the Act against Mr Barr personally (the associated application). I have also determined<sup>2</sup> the associated application today having heard both applications together.

[6] ME defends the applications for breaches and penalties, as does Mr Barr in the associated application. ME says that the ROS terms could not have been breached by anything said by those associated with H Group who had no knowledge of the ROS including Mr Barr and others as referenced in Mr Finegan's claim. ME says the Board of ME were not told about the ROS because the lead up to and the signing of the ROS were dealt with exclusively by ME's employed CEO under their delegated duties to manage all employment

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<sup>1</sup> NZBN 9429042778875. <https://app.businessregisters.govt.nz/sber-businesses/>

<sup>2</sup> [2026] NZERA 64

matters. In short ME says there can be no breach of a ROS if its existence and terms were not known to those said to have breached it. If there are no breaches, then penalties cannot follow.

### **The Authority's Investigation process**

[7] Mr Finegan initially lodged a claim against ME. At a phone conference call, Mr Finegan explained that he wanted to also bring a claim against Mr Barr, something to this effect he had included in the body of his initial statement of problem and in his explanation to me in the call. I indicated that he had not commenced proceedings for a penalty against Mr Barr (if that is what he sought) and this is a required starting point<sup>3</sup>, something that has to occur within 12 months<sup>4</sup>. These things were reflected in my subsequent written Directions after the phone conference call. Mr Finegan then lodged a penalty application against Mr Barr personally. I directed both matters be heard together given the duplication of most of the facts and witnesses. Mr Barr was then separately represented and called evidence from a further witness, Mr Ewart, CEO of H Group and someone with business interests in H Group including co directorship with Mr Barr.

[8] Mr Finegan sought to summons several witnesses. Of those he requested, all except two were to be witnesses for the respondent or ME. I did not consider one witness of the two remaining on Mr Finegan's list to be of assistance to my investigation. I summonsed<sup>5</sup> the other, the above referred to director (XP) of Mr Finnegan's subsequent employer X Ltd, who appeared at the investigation meeting and answered questions on oath in this and the associated application.

[9] I held an investigation meeting over one and a half days to hear both this and the associated application. Written briefs of evidence were lodged, from Mr Finegan, Mr Barr, Ms Vranjac-Wheeler (CEO of ME and signatory to the ROS), and Messers Kennedy and Ewart both having business interests in H group, and Mr Kennedy also as someone with long standing involvement at a regional level in ME. I asked questions of all witnesses on oath or affirmation. Mr Finegan and respective counsel on both applications also had this opportunity.

[10] I received written submissions after the investigation meeting. Mr Finnegan was provided a timetabled opportunity to a reply to submissions from respective counsel. I

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<sup>3</sup> Employment Authority Regulations 2000, regs 5 and 27.

<sup>4</sup> Employment Authority Regulations 2000, regs 5 and 27; Employment Relations Act 2000, 135(5).

<sup>5</sup> Employment Relations Act 2000, schedule 2, clause 5.

considered this fair to the unrepresented Mr Finegan. He was contacted about this by the Authority, the second time in the afternoon of 5 November 2025. Mr Finegan gave no response. On 6 November 2025 I took this to mean that my final information was that he did not intend to provide a right of reply in addition to his written submissions already provided. I then reserved my determination.

[11] This determination states findings and makes conclusions as necessary to bring an end to the employment relationship problem before me. It has not recorded all evidence and submissions received.<sup>6</sup>

### **Other remedies claimed**

[12] For the sake of completion I note that Mr Finegan included in his reply evidence statement that he also sought personal grievance remedies. A party to a ROS can seek compliance orders under s 137 of the Act (there are no compliance applications before me) and penalty applications under s 149(4) which Mr Finegan has done. To that extent I will not be considering the material that Mr Finegan has included about seeking financial losses beyond the penalty applications before me.

### **Issues**

[13] The following issues will be determined:

- a. Did ME breach the terms of the ROS in relation to confidentiality and non-disparagement?
- b. If so to any or all of the above, what if any penalties should be ordered?
- c. If penalties are ordered what if any part of these are to be paid to Mr Finegan?
- d. Are any costs to be ordered?

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<sup>6</sup> As permitted by s 174E of the Employment Relations Act 2000 (the Act).

**Did ME breach the terms of the ROS in relation to confidentiality and non-disparagement?**

*Confidentiality of the existence of the ROS*

[14] It is clear that three people connected to H attended a ‘mini conference’ for H at which XP for X Ltd was a speaker and unexpectedly introduced Mr Finegan as the new employee for X Ltd, that X Ltd’s prior consultant to deliver its services to H group was being replaced by Mr Finegan.

[15] The evidence around what was then said to XP by three attendees at the H group’s ‘mini conference’ Messrs Ewart, Barr and Kennedy and to each other at or after the conference focuses on things that were said about Mr Finegan rather than any reference to there being a ROS at the end of his employment within ME. Their evidence is also consistent in that XP was repeatedly calling them asking for details about how and why Mr Finegan’s employment ended at ME. This evidence is consistent with the meeting that XP invited Mr Finegan to after the H group conference (of which I have a transcript and recording) which shows me a persistent line of repeated questioning by XP asking Mr Finegan about how and why his employment ended at ME. That recording and transcript includes Mr Finegan saying he could not tell XP about the end of his ME employment and then eventually (under what I conclude was repeated pressure from XP) confirmed he had entered a ROS but could not tell XP anything about this. XP continues in the transcript to not accept they could not be told about what the ‘settlement’ was. The recording and transcript does not support that someone had told XP there was a ROS in place or what its contents were.

[16] To the extent of Messrs Ewart and Kennedy I find neither was close enough related to the employment of Mr Finegan with ME to have been expected to have directly known about a ROS.

[17] Mr Barr was on the Board of ME, an entity with a constitution that refers to the Board having a governance role. His evidence is that he knew nothing about the ROS and therefore its terms. This is supported by the CEO of ME, Ms Vranjac-Wheeler who explained plausibly her firm understanding that she was not required to tell the board about the ROS. I am less

satisfied that evidence of her delegations relating to settling financial matters without reference to the Board fully covers this situation, however I found her evidence included her genuine understanding that it was not necessary to tell the Board about the ROS. Mr Barr is on the Board. I find he was likely not aware of the existence of the ROS. Accordingly, I do not have sufficient evidence that he disclosed the fact of the ROS to others in the H group or to XP.

[18] The application based on a breach of the confidentiality terms of the ROS against ME is unsuccessful and as such a penalty is not considered.

*Was Mr Finegan disparaged and was this a breach by ME of the ROS?*

[19] I will first consider whether things said about Mr Finegan could be regarded as disparaging. Then, if so whether ME could then be found to have breached the ROS because of these things being said which is the first step before considering whether a penalty could be awarded.

[20] Disparaging in this context has been given a wide definition and can include telling a prospective employer not to employ someone or communicating to others that someone is not recommended for employment.<sup>7</sup> It is not in dispute that the ROS contained an obligation not to disparage Mr Finegan. This was alongside an agreement that he would be provided with a written reference consistent with verbal terms if requested. The latter occurred and was one of two (different references) that X Ltd apparently relied on to offer employment to Mr Barr.

[21] I would have no problem finding that Mr Finegan has likely been disparaged here when he has been described to XP just after offer and acceptance of employment with X Ltd as being someone who has behaved in the workplace in such a way that they should not be employed (Mr Kennedy); that they are not someone who the teller would employ (Mr Barr). Both of these witnesses acknowledge they said these things to XP after the H group 'mini conference' when XP was contacted by Mr Kennedy, and when XP contacted Mr Barr after Mr Kennedy suggested XP ring Mr Barr. It is less clear to me that Mr Ewart focused on Mr Finegan when talking to XP. His evidence is that he initiated a call to XP after the H group

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<sup>7</sup> *Lumsden v Skycity Management Ltd* [2017] NZEmpC 30.

'mini conference'. He did not know Mr Finegan before the conference. I find I have insufficient before me to conclude that he was not otherwise communicating to XP for X Ltd with his concern to retain the continuity of the previous consultant who I accept H group then contracted to directly perform the services they previously provided through X Ltd.

*Were any disparaging things said about Mr Finegan to XP a breach by ME of the ROS term?*

[22] Mr Barr has gone to lengths to show the Authority he did not and continues not to know about the terms of the ROS. The point has been well made although it is academic in relation to the existence of the ROS and the terms (including non-disparagement) that have now been necessary to bring before the Authority in this enforcement matter<sup>8</sup>. I note that the non-disparagement term continues. That Mr Barr did not know about the 'non-disparagement' term in the ROS is not only supported by the fact (as I have found above) that he likely did not know about the existence of the ROS, but also because Ms Vranjac-Wheeler as a new CEO's evidence is twofold. She did not tell the Board Members. I accept her evidence as plausible about this and that it appeared well intentioned with some degree of care for Mr Finegan. I accept that Mr Finegan (confirmed in his oral evidence when pressed) did not want the Board to know about matters in relation to the ROS. Ms Vranjac-Wheeler was clear about this but seemed to lack an understanding of how ME could be bound by something they knew nothing about. I explain my concern about this below.

[23] Standing back from the above, I have then considered whether ME created an unfair situation here for Mr Finegan by not having a framework in its operations between the ME CEO (as an employee) and the Board with its governance obligations.

[24] In effect the ME CEO agreed to sign up ME to agree to the human non disparagement term. The humans in governance of ME (Board members) needed to know about this in order for ME to have been able to comply with this term in the ROS. Disparagement is a very human action. In essence it is about saying negative things about someone else. While Mr Finegan may have wanted confidentiality in terms of the ROS, I am not satisfied this alters the obligation on the employer here to have entered such an important settlement document,

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<sup>8</sup> Employment Relations Act 2000, s149(3)(b).

that included an ongoing agreement not to disparage<sup>9</sup> without giving those that could reasonably be expected to meet the obligation the knowledge of this.

[25] Based on the above, I find that in relation to non-disparagement, ME breached the ROS when Mr Barr told XP he would not employ Mr Finegan. It was a disparaging statement and one that could have been avoided by ME had it more reasonably entered the ROS with a process to ensure that Board members had knowledge of ME's obligations. Mr Kennedy was not a Board member, and while he may have had discussions that influenced things he said to XP I have insufficient to show me that these came from information from Mr Barr. I found Mr Kennedy very forthright in his negative views of Mr Finegan to the extent that it is more likely he was the one likely to have formed some independent opinions that he communicated to XP. The overall effect however was exacerbated by Mr Barr also telling XP that he would not employ Mr Finegan. Had Mr Barr been aware of the ME obligations as a Board member he may have paused to consider what he said.

[26] Accordingly, I find that ME breached the ROS by not having in place what could reasonably and obviously be expected to be a mechanism to ensure Board members of ME were aware that ME had agreed not to disparage Mr Finegan post the ROS. ME is liable to a penalty for breach of the non-disparagement term under s 149(4) of the Act. I will now consider the factors under s 133A of the Act to determine the penalty amount if any.

### *Object of the Act under s 3*

[27] The object of the Act includes that there is an inherent imbalance of power in employment relationships. Here a long-established body with far reach in the electrical industry through its levied membership has failed to treat Mr Finegan fairly in relation to not having what I consider was a mechanism to ensure it could meet all obligations under the ROS. This in particular was to ensure that its Board members met their human obligation not to disparage Mr Finegan after the end of his employment. I will consider the extent of this below under other factors. For now there needs in my view to be a penalty for deterrence to ensure the statutory reliability of a ROS.

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<sup>9</sup> Not all ROS documents contain this clause.

*Nature and extent of the breach*

[28] When considering this factor, I note that the breach relates to Mr Finegan and not a wider workforce. However, had ME in place what could reasonably be expected to be a way for it to have ensured it could comply with non-disparagement I would have expected Mr Barr, who gave evidence as a straightforward witness, would have been alerted to ME's obligations and may well have tempered his comments to Mr Finegan's subsequent employer. This may have avoided the expansion of this matter. I find this weighs towards a sanction but not at the high \$20,000.00 maximum level. In short there is one employee affected, and I do not find a level of involvement in the ME breach that is deliberate. I would categorise it as misguided.

*Intentional, inadvertent or negligent*

[29] I do not find this is a situation that is likely any of the above. I find it a situation that is surprising for a long established body and as above, misguided. I do not find this factor weighs towards a high level penalty amount.

*Nature and extent of any loss or damage suffered by any person*

[30] I do not find this is a situation where ME has gained anything from the breach except perhaps some better understanding about a ROS in terms of the matters agreed to that relate to more than just a monetary settlement as most ROS do. I take this from the CEO's part focus on her financial delegations to justify not telling the board. I have already explained that Mr Finegan has no redress in the grievance remedies he has more latterly set out in his reply evidence, but this was something he gave up in exchange when entering the ROS, a ROS he relied on would mean amongst other things that ME would ensure he would not be disparaged to others especially in relation to his ongoing employment in the industry.

[31] Mr Finegan has said he has suffered financially from not being successful in further employment or from being what he perceives as at risk of the same given the breadth of the reach of ME and the H group business in the industry he is skilled to work in. He has provided one example where he thought the job interview went well and then later the

prospective employer explained he was not successful. He considers this was a surprising turn around in attitude towards him. He has no other evidence to suggest whether this was anything other than the prospective employer's choice. I find it speculative. I also note that Mr Finegan was successful in obtaining his employment subsequent to ME by getting a role with X Ltd. While Mr Finegan says that even though X Ltd did not end his employment as I can see was referenced by XP in the above referenced meeting about 'things said' to XP about Mr Finegan, documentation before me provided by Mr Finegan shows he eventually resigned from that role with matters appearing to be unresolved and disputed. I am not satisfied I have sufficient evidence that Mr Finegan lost his job at X Ltd because of ME's breach. Documentation about unresolved matters with X Ltd from the employer perspective did not reference this.

[32] I accept the stress Mr Finegan has explained that he has felt. He refers to supporting a dependant. He has discovered in these proceedings that Mr Kennedy in particular has said negative things about him. On the other hand, Mr Finegan in the above referenced meeting is recorded as telling XP very negative personalised views about Mr Barr.

[33] Standing back from the above I consider this factor supports a lower level of penalty.

#### *Mitigation*

[34] I do not find there has been mitigation here. Balanced with this is what I consider an unusual matter with (as above) some likely lack of intentional breach. I find this factor neutral towards a penalty.

#### *Vulnerability of the employee*

[35] While Mr Finegan has referenced his vulnerability I have considered this above in relation to object of the Act and the power imbalance that can exist where in this instance Mr Finegan is one employee who wants to work in an industry that ME has a far reach in. This includes membership of those who equally have a far reach into the same industry. In a small country like New Zealand, I find the effect here is likely that Mr Finegan is particularly vulnerable to 'talk' about him without a fair process or his ability to respond to that 'talk'.

That is the context in which ME has poorly managed its obligations towards not telling its board members about their obligations in relation to non-disparagement. This in my view attracts a higher penalty for deterrence to others to again support the public confidence the public can have in the finality of a ROS.

#### *Prior involvement in breaches*

[36] I have found no reference to prior breaches of this kind for this employer and as such find it a neutral factor towards a penalty.

#### *Summary of s133A*

[37] Standing back from the above I consider that other matters touching on disparagement breaches do not have not the exact type of unusual matrix as this; I note the need to deter an employer entering a ROS without ensuring it has operationalised its ability to meet all the obligations it has agreed to in a ROS where the employee forgoes the right to grievance claims; I note the need to deter a misguided approach to entering a ROS to support the need to have the public hold reliance on the finality and reliability of this as an end to employment relationship differences. The latter is particularly important when the obligations are human facing obligations such as here with the obligation not to disparage.

[38] Based on all of the above I order ME to pay a penalty of \$8,000.00 with 25 % to the Crown and 75% to be paid to Mr Finegan on the basis that he ought not to have had to bring this claim and has essentially no other redress through person grievance remedies.

#### **Outcome**

[39] The Electrical Contractors Association of New Zealand is to pay a penalty under s 149(4) of the Employment Relations Act 2000 of \$2,000.00 to the Crown Account and \$6,000.00 to be paid to Peter Thomas Finegan.

## Costs

[40] Mr Finegan has been successful in his application for one of the two penalty applications. He was self-represented throughout. On the face of it, costs may not be applicable. However, in the event there is an issue as to costs and the parties are unable to resolve this they may seek an Authority determination on costs. If this applies, Mr Finegan 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 ME will then have 14 days to lodge any reply to memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[41] The parties are reminded that they 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. Information about costs can be found on the Authority website.<sup>10</sup>

Antoinette Baker  
Member of the Employment Relations Authority

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<sup>10</sup> [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)