

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2026] NZERA 70
3417764

BETWEEN ZJC
Applicant

AND MBS
First Respondent

AND PIY
Second Respondent

AND OZF
Third Respondent

3417784

BETWEEN XYY
Applicant

AND MBS
First Respondent

AND PIY
Second Respondent

AND OZF
Third Respondent

Member of Authority: Philip Cheyne

Representatives: Emma Brankin, advocate for the Applicants
PIY, for the Respondents

Investigation Meeting: 21 January 2026 in Christchurch

Information received: 2 February 2026 from the Applicant

Date of Determination: 12 February 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problems

[1] MBS is a company. It employed ZJC and XYY. PIY and OZF are directors of MBS and they each own 50% of the company's shares.

[2] There are two settlement agreements: one between MBS and ZJC and the other between MBS and XYY. Under those agreements, MBS must pay ZJC and XYY specified amounts at set times. The agreements include PIY and OZF as personal guarantors, should MBS default on payments. The agreements each provide that if any payment is missed, the entire remaining amount due under the agreement becomes payable within 7 days.

[3] Payments have been late and are still behind.

[4] In their applications, ZJC and XYY each seek a compliance order against the respondents and costs.

[5] The respondents defend the applications, saying they are trying to meet the obligations under the agreements.

[6] One of the applications was transferred to the Christchurch office of the Authority and both matters were investigated at the same time, with the parties' support.

Non-publication

[7] The settlement agreements were formalised under s 149 of the Employment Relations Act 2000 and are enforceable under s 151 of that Act.

[8] As is common, the settlement agreements provide that the terms of settlement and all matters discussed in mediation shall remain, so far as the law allows, confidential to the parties. I raised with them whether they sought non-publication to preserve the agreed confidentiality.

[9] The applicants do not seek non-publication, but the respondents do.

[10] The respondents also advance a second reason in support. They say that non-publication is necessary to avoid undermining their attempts to raise funds through lenders and investors. Funding is required to support MBS's attempts to continue trading, which

would allow it to meet its existing obligations to secured and unsecured creditors, including the applicants.

[11] I am satisfied that publication of the parties' identities is likely to derail MBS's efforts to continue trading. That would then diminish the applicants' chances of receiving the money they are due under the agreements, at least in the foreseeable future. Enforcement of the personal guarantees may be problematic, as other creditors of MBS would have similar personal guarantees.

[12] To support the agreed confidentiality and for the foregoing reason, I prohibit the publication of the parties' identities or identifying details.

Compliance orders are appropriate

[13] The settlement agreements are enforceable under s 151 of the Employment Relations Act 2000.

[14] MBS accepted that payments due under the settlement agreements had not been made on time and are not up to date.

[15] It is helpful to set out the current situation for each applicant.

Payments to ZJC

[16] For ZJC, there should have been five monthly payments of \$3,000.00 starting on 22 September 2025, with the last payment due on 22 January 2026, totalling \$15,000.00 compensation. There should be five further monthly payments of \$3,000.00 (net) starting 22 February 2026, with the last payment due on 22 June 2026, totalling a further \$15,000.00 (net).¹ There should also have been a payment to ZJC's representative of \$4,000.00 (plus GST) towards costs, due on 22 October 2025.

[17] ZJC has received three payments of \$3,000.00 totalling \$9,000.00. The first two payments were received on or just after the required dates, but the third payment was late. The 22 December and 22 January payments have not been made. The payment to the representative has not been made.

¹ The payments starting 22 February 2026 comprise wages, holiday pay and contractual entitlements after tax.

Payments to XYY

[18] For XYY, there should be 11 monthly payments of \$3,416.66 starting in September 2025 within 14 days of the agreement, with a twelfth payment of \$3,416.74 in August 2026, a total of \$41,000.00 compensation. There should also have been a payment to ZJC's representative of \$6,000.00 (plus GST) towards costs in two tranches, due on 22 October 2025 and 22 November 2025.

[19] XYY's representative has taken the sixth of the month as the due date for the 12 monthly payments. However, clause 2 of the settlement agreement required the first payment within 14 days of the agreement (15 September 2025) and subsequent payments "for each of the following months". I interpret that to mean payment by the 29th of each month. The February payment must be by the 28th of that month.

[20] XYY has received a total of \$10,249.98 in three payments of \$3,416.66 at this stage when he should have received five payments. The three payments were each late.

[21] The payments to the representative have not been made.

The respondents have not complied with the terms of settlement

[22] In summary, payments were late or have not been made at all. I find that MBS has not complied with the terms of settlement for ZJC and XYY. It follows also that PIY and OZF have not complied with the personal guarantees they gave if MBS was unable to meet the schedule of payments.

[23] Under s 137 of the Employment Relations Act 2000, where any person has not complied with terms of settlement that are enforceable under s 151 of the Act, the Authority may, in proceedings involving that person, order that person to do any specified thing to prevent the further non-compliance with the terms of settlement.

[24] The parties to the settlement agreements are just the employer (MBS) and each employee (ZJC and XYY), but the agreements also created obligations for PIY and OZF. PIY signed the agreements for MBS as company director and also PIY and OZF both signed the agreements as personal guarantors.

[25] MBS has provided evidence to show that its defaults under the settlement agreements are the result of it, PIY and OZF juggling pressing demands for available funds – payments to

suppliers to maintain access to product required for its business, payments to secured creditors and lenders and payments to partly meet obligations to ZJC and XYY.

[26] I am satisfied that MBS is not currently able to meet a demand for payment of the entire amounts due under the settlement agreements. Nor are PIY or OZF able to pay those amounts. It is not appropriate to order compliance if the order cannot be complied with.

[27] However, PIY is optimistic about the pipeline of likely further funding and work which would allow it to meet obligations as they fall due, if it continues trading.

[28] I need to consider the effects on ZJC and XYY of not receiving the agreed payments. Both gave evidence and I accept that the effects on them are significant. However, those effects are worsened rather than ameliorated by an order that cannot be met.

[29] The respective interests are fairly balanced by compliance orders that require adherence to the agreed timetable for future payments, while also requiring the respondents to make good within a reasonable time the current defaults. In this approach, I rely on powers under s 138(4A) of the Employment Relations Act 2000.

Compliance Orders – File number 3417764

[30] MBS must comply with the agreed terms of settlement by paying ZJC the following amounts by the following dates:

- (a) \$3,000.00 (net) by 22 February 2026; \$3,000.00 (net) by 22 March 2026; \$3,000.00 (net) by 22 April 2026; \$3,000.00 (net) by 22 May 2026; \$3,000.00 (net) by 22 June 2026; and
- (b) \$6,000.00 compensation by no later than 31 March 2026.

[31] MBS must comply with the agreed terms of settlement by paying ZJC's representative \$4,000.00 (plus GST) by no later than 31 March 2026.

[32] If there is a default by MBS on any of the payments set out in [30] and [31] above, PIY and OZF must comply with the agreed terms of settlement by personally paying those amounts by the specified dates.

Compliance Orders – File number 3417784

[33] MBS must comply with the agreed terms of settlement by paying XYY the following amounts of compensation by the following dates:

- (a) \$3,416.66 by 28 February 2026; \$3,416.66 by 29 March 2026; \$3,416.66 by 29 April 2026; \$3,416.66 by 29 May 2026; \$3,416.66 by 29 June 2026; \$3,416.66 by 29 July 2026; \$3416.74 by 29 August 2026; and
- (b) A further sum of \$6,833.32 by no later than 31 March 2026.

[34] MBS must comply with the agreed terms of settlement by paying XYY's representative \$6,000.00 (plus GST) by no later than 31 March 2026.

[35] If there is a default by MBS on any of the payments set out in [33] and [34] above, PIY and OZF must comply with the agreed terms of settlement by personally paying those amounts by the specified dates.

Conclusion

[36] The applicants are successful so are entitled to costs on these applications. The investigation meeting was very brief, so fixing costs on a daily tariff basis would disadvantage them. I set \$1,000.00 costs plus application fees of \$71.55 for each applicant as the respondents' reasonable contributions to costs. Within 28 days, the respondents jointly and severally must pay the following amounts:

- (a) \$1,071.55 to ZJC; and
- (b) \$1,071.55 to XYY.

[37] Interest was sought but is not ordered. Interest was not part of the original agreement and the present problem concerns enforcement of the agreed terms.

[38] I draw the respondents' attention to the provisions of s 140(6) of the Employment Relations Act 2000 which sets out the powers of the Employment Court on the applicants' application, if the respondents fail to comply with the compliance orders set out above.

Philip Cheyne
Member of the Employment Relations Authority