

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 95
3394144

BETWEEN

JOAN ARCENAL
First Applicant

MELVIN BAGUIO
Second Applicant

GREGORIO MAITIM
Third Applicant

AND

6V CONNECT LIMITED
First Respondent

VIVENCIO (VEN) FLORA
Second Respondent

Member of Authority: Matthew Piper

Representatives: Carren McLean-Stanley, counsel for the First, Second
and Third Applicants

Vivencio Flora, for the First Respondent and in person

Investigation Meeting: On the papers

Submissions and other information received: 9 October 2025 and 30 January 2026 from the applicants
and 29 October 2025 from the respondents

Determination: 23 February 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicants, Joan Arcenal, Melvin Baguio and Gregorio Maitim, were each parties to a single record of settlement entered into with 6V Connect Limited (6V Connect) and Vivencio Flora dated 11 February 2025 (Agreed Terms of Settlement).

Mr Flora signed the Agreed Terms of Settlement both as director of 6V Connect and in his personal capacity.

[2] The Agreed Terms of Settlement was signed by a mediator pursuant to s 149 of the Employment Relations Act 2000 (the Act).

[3] The applicants claimed that 6V Connect and Mr Flora personally failed to make payments required by the Agreed Terms of Settlement. They therefore sought compliance orders pursuant to s 137 of the Act to enforce the Agreed Terms of Settlement and that penalties be imposed on 6V Connect and Mr Flora.

The Authority's investigation

[4] The Authority held a case management conference (CMC) regarding this matter on 19 September 2025. Mr Flora attended the CMC.

[5] Neither 6V Connect nor Mr Flora lodged a statement in reply, nor did either indicate at the CMC they intended to seek leave to do so.

[6] During the CMC Mr Flora accepted he and 6V Connect had failed to make payments required. He said this was because he and the company had been unable to afford to do so.

[7] During the CMC it was agreed that the matter would be investigated and determined on the papers, that is by affidavit evidence and written submissions. How this would work was explained during the CMC and in the Authority's directions following the CMC.

[8] Mr Flora lodged a range of documents but did not lodge affidavit evidence. Despite Mr Flora not fully participating in the Authority's process, I am satisfied he had a fair opportunity to do so.

[9] Ms Arcenal, Mr Baguio and Mr Maitim each lodged affidavit evidence and submissions were lodged on the behalf on 9 October 2025.

[10] Despite Mr Flora having indicated in October 2025 that payments would be made to each of the applicants, on 30 January 2026 the applicants confirmed no such

payments had been received. Mr Flora made no further comment, despite being given the opportunity to do so.

[11] As permitted by s 174E of 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.

The issues

[12] The issues requiring investigation and determination were:

- (a) Did the first and or second respondent breach the Agreed Terms of Settlement with the first, second and third applicants?
- (b) Should the Authority make compliance orders pursuant to s 137 of the Act enforcing the Agreed Terms of Settlement?
- (c) Should a penalty be imposed on the first or second respondent in relation to any breach of the Agreed Terms of Settlement?
- (d) Should either party contribute to the costs of representation of the other?

What were the terms of the Settlement Agreement?

[13] The parties to the Agreed Terms of Settlement were listed as including each applicant as an “Employee”, 6V Connect as “Employer” and Mr Flora as “Principal”.

[14] Each applicant signed the Agreed Terms of Settlement and Mr Flora signed as “Director and personally”.

[15] The Agreed Terms of Settlement fully and finally resolved all matters between the parties, including proceedings in the Authority that were then on foot between each applicant and 6V Connect, in exchange for payments to be made to each applicant.

[16] Regarding the payments to be made to each of the applicants, the Agreed Terms of Settlement provided as follows:

- 2. 6V Connect Limited and/or Vivencio (Ven) Flora shall pay \$10,500 gross, inclusive of Holiday pay to Joan Arcenal, on/or before the 1st day of the July 2025 for a period of 9 months with the final payment being on/or before 1st March 2026, at the rate of \$1,166.70 per month, in terms of the provisions of

s 123(1)(b) of the Employment Relations Act 2000. This amount will be paid by way of Direct Credit.

3. 6V Connect Limited and/or Vivencio (Ven) Flora shall pay \$8,720 gross, inclusive of Holiday pay, to Melvin Baguio, on/or before the 1st day of the July 2025 for a period of 9 months with the final payment being on/or before 1st March 2026 at the rate of \$968.90 per month, in terms of the provisions of s 123(1)(b) of the Employment Relations Act 2000. This amount will be paid by way of Direct Credit.

4. 6V Connect Limited and/or Vivencio (Ven) Flora shall pay \$8,660 gross, inclusive of Holiday pay to Gregorio Maitim, on/or before the 1st day of July 2025 for a period of 9 months with the final payment being on/or before 1st March 2026, the sum of \$962.20 per month, in terms of the provisions of s 123(1)(b) of the Employment Relations Act 2000. This amount will be paid by way of Direct Credit.

[17] Clause 6 of the Agreed Terms of Settlement then said that if any of the payments owing to any of the applicants are missed, “*then the entire amount will be due at that date*”.

[18] In summary, the parties resolved matters between themselves by 6V Connect and/or Mr Flora agreeing to pay certain amounts nett of tax to each of the applicants in accordance with an instalment plan. Where a payment was missed under the instalment plan, the total amount outstanding would then become due.

[19] I find the wording of the Agreed Terms of Settlement is sufficiently clear so as to attribute joint and several liability to 6V Connect and Mr Flora for the various payments that were to be made to each of the applicants.

Did 6V Connect or Mr Flora breach the Settlement Agreement?

[20] Each applicant lodged an affidavit to the effect that each deponent had been employed by the 6V Connect and had entered into the Agreed Terms of Settlement with 6V Connect and Mr Flora.

[21] Each of the applicants were entitled to different payments under the Agreed Terms of Settlement (which are as set out above) and each said they were not paid as required by the agreement.

[22] Each applicant’s affidavit evidence was not contested by 6V Connect or Mr Flora and each is therefore accepted by the Authority.

[23] I therefore find no payments were made to any of the applicants as required by the Agreed Terms of Settlement, and that 6V Connect and Mr Flora are jointly and severally liable for paying the full amounts owing to each applicant under the Agreed Terms of Settlement.

Should the Authority make a compliance order pursuant to s 137 of the Act?

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

[25] The effect of s 151 is that any agreed terms of settlement that are enforceable by the parties under s 149(3) (such as the Agreed Terms of Settlement), may be enforced by way of a compliance order.

[26] As noted above, 6V Connect and Mr Flora have failed to comply with the Agreed Terms of Settlement. This is despite the terms being sufficiently clear, Mr Flora accepting liability and a demand for payment made on 8 July 2025. I consider it is likely that 6V Connect and Mr Flora are likely to continue to fail to comply with the Agreed Terms of Settlement.

[27] It is appropriate for the Authority to exercise its discretion under s 137(2) of the Act to order compliance with the Agreed Terms of Settlement to prevent further non-compliance. These orders are recorded below.

[28] The imposition of a compliance order is a serious matter. Should 6V Connect or Mr Flora fail to comply with this compliance order, each may be pursued 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 three months.

[29] Alternatively, a certificate of determination may be obtained from the Authority for the purposes of enforcement through the District Court.

Penalties

[30] Section 149(4) of the Act provides that a person who breaches an agreed term of a s 149 settlement agreement is liable to a penalty. As set out above, 6V Connect and Mr Flora have breached the Agreed Terms of Settlement so the question becomes whether a penalty should be imposed, and at what level.

[31] The maximum penalty that could be imposed on Mr Flora as an individual is \$10,000 and the maximum penalty that could be imposed on 6V Connect as a company is \$20,000.

[32] Given Mr Flora and 6V Connect are joint and severally responsible for compliance with the Agreed Terms of Settlement, it is logical to take a global approach to the question of whether a penalty should be imposed.

[33] The principles dealing with the imposition of a penalty for non-compliance with a s 149 settlement agreement are found in legislation and case law. As the Court has held, the following considerations are relevant¹:

- (a) Protecting the finality of s 149 settlement agreements by deterring the individual transgressor and others from similar breaches;
- (b) To punish the transgressor;
- (c) Consistency with penalties imposed on others in similar circumstances;
- (d) An assessment of the nature and extent of the breach, including whether it was deliberate, one-off or sustained, with the maximum penalty being reserved for the worst cases;
- (e) Any steps taken by the transgressor to remedy the breach;
- (f) Proportionality in the circumstances.

[34] The Agreed Terms of Settlement was signed by the parties and a mediator in the context of each applicant's claims having already been lodged in the Authority. To achieve settlement of proceedings that have been commenced and to then not pay what is due under the resultant settlement agreement is not consistent with the objectives of

¹ *ITE v ALA* [2016] NZEmpC 42 at [61]

the Act, which is geared toward the resolution of employment relationship problems at the lowest possible level.

[35] It is appropriate that a penalty be imposed on the respondents to denounce this behaviour and deter others from behaving this way.

[36] It is also appropriate that 6V Connect and Mr Flora be punished for making no payments under an agreement entered into under s 149 of the Act. Such behaviour is beneath the expected norms created by the Act and which are honoured by the vast majority of those who enter into such agreements to resolve employment disputes.

[37] Mr Flora, on his own behalf and on behalf of 6V Connect, had time to arrange payment as required under the Agreed Terms of Settlement, but did not do so. When demand for payment was made after the date for payment passed, Mr Flora did not respond. He therefore took limited steps to remedy his breach.

[38] Mr Flora's failure to provide affidavit evidence means it is difficult to assess his level of impecuniosity. Documentation he lodged with the Authority does suggest he has faced serious financial difficulties and this fact appears to be accepted by the applicants.

[39] Whilst I have considered penalties imposed in other cases, each must be considered on its own facts.

[40] I order Mr Flora to pay a penalty of \$4,000 with \$1,000 going to each of the applicants, and \$1,000 to be paid into the Crown bank account. This represents a proportionate denunciation of Mr Flora and 6V Connect Limited's actions.

Costs

[41] The power of the Authority to award costs is set out at clause 15 of Schedule 2 of the Act. The principles and approach adopted by the Authority in respect of this power are outlined in the Authority's practice direction².

[42] The Authority usually uses a daily tariff as a starting point for assessing costs, which may be adjusted upward or downward according to the circumstances at hand.

² <https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>

A tariff of \$2,250.00 is an appropriate starting point for a matter investigated on the papers, such as this one.

[43] The Authority may adjust the tariff figure up or down depending on the circumstances of the case.³ Factors that are relevant for consideration in terms of whether costs are awarded and whether the tariff is adjusted include:

- a. The Authority's equity and good conscience jurisdiction as applied to the particular circumstances of the case;
- b. That costs are not to be used as punishment of a party or to express disapproval of conduct, rather they are to contribute to the costs incurred by the successful party; and
- c. Awards should be modest.

[44] The applicants have successfully established their claims against the respondents and are entitled to an award of costs. I set costs at the usual tariff rate of \$2,250.00 without adjustment.

[45] The applicants are also entitled to recover their lodgement fee of \$71.55 from the respondents.

Orders

[46] Within 28 days of the date of this determination, 6V Connect Limited and Mr Vivencio Flora are ordered to pay on a joint and several liability basis:

- a. the outstanding amounts owing under the Agreed Terms of Settlement of:
 - i. To Joan Arcenal, \$10,500.00 (gross);
 - ii. To Melvin Baguio \$8,720.00 (gross);
 - iii. To Gregorio Maitim \$8,660.00 gross (gross); and
- b. costs of \$773.85 to each applicant (being a third share each of the daily tariff of \$2,250 plus a third of the applicable lodgement fee); and

³ *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808, confirmed in *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135.

- c. a penalty of \$4,000.00, in respect of which \$1,000.00 is to be paid to each applicant and the remaining \$1,000.00 is to be paid to the Crown account.

Matthew Piper
Member of the Employment Relations Authority