

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 447
5392333

BETWEEN MONIQUE ATKINSON
Applicant

AND COVERALL CLEANING
CONCEPTS NEW ZEALAND
LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: Danny Gelb, Advocate for Applicant
Tony Kullin, Regional Manager for Respondent

Investigation Meeting: 10 December 2012 at Auckland

Determination: 10 December 2012

DETERMINATION OF THE AUTHORITY

- A Coverall Cleaning Concepts New Zealand Limited (Coverall Cleaning) breached the Record of Settlement it entered into with Monique Atkinson under s.149 of the Employment Relations Act 2000 (the Act).**
- B A penalty of \$2,000 is imposed on Coverall Cleaning for that breach. Within 10 days of the date of this determination Coverall Cleaning must pay directly to Ms Atkinson \$1,000 of the penalty. The \$1,000 balance of the penalty must be paid to the Authority for payment into the Crown Bank Account.**
- C Coverall Cleaning is ordered to contribute \$750 towards Ms Atkinson's costs plus \$71.56 to reimburse her filing fee.**

Employment Relationship Problem

[1] Ms Atkinson claims Coverall Cleaning breached the Record of Settlement (RoS) the parties entered into under s.149 of the Act. Clause 6 of the RoS states

Coverall Cleaning will pay Ms Atkinson her compensation within 14 days of the mediator signing the RoS.

[2] The mediator signed the RoS on 01 August 2012 so Coverall Cleaning was required to pay Ms Atkinson her compensation by 15 August.

[3] On 13 August 2012 Ms Atkinson's representative wrote to Coverall Cleaning's lawyer, Mr Tony Tapsell, advising she was expecting to be paid on 15 August 2012 and because she had made arrangements with her creditors it would put her in "a very difficult and embarrassing situation" if the money was not paid on that date. Mr Tapsell was asked to convey to Coverall Cleaning the importance of paying the compensation on time.

[4] Ms Atkinson's representative also phoned Mr Tapsell on 15 August to chase payment and then followed that up the next day with another email demanding payment of the compensation owing to Ms Atkinson.

[5] Coverall Cleaning did not pay Ms Atkinson her compensation until 28 August 2012. Ms Atkinson gave unchallenged evidence about the adverse impact the breach had on her. She explained how she was unable to honour her financial commitments and how that caused her stress, embarrassment and financial difficulties.

[6] Ms Atkinson wants a penalty to be imposed on Coverall Cleaning for its breach of the RoS and she seeks that some or the entire penalty be paid to her personally, instead of the Crown.

[7] Coverall Cleaning says the breach of the RoS was justified so no penalty should be imposed. Coverall Cleaning says Ms Atkinson's compensation payment was delayed because:

- She did not advise it of her bank account details
- It did not know whether the compensation was to be paid to Ms Atkinson or her representative
- Payment had to come from the Australian based parent company so the overseas transfer caused some delay

- The Australian director was unhappy about transferring funds internationally without first receiving an original signed RoS
- The Australian director responsible for paying the compensation decided to take accountancy advice about whether or not tax had to be deducted from the compensation to be paid.

[8] I find that none of the reasons Coverall Cleaning gave excused its breach of the RoS. The parties had both signed the RoS by 25 July 2012. Coverall Cleaning therefore would have known what obligations it had agreed to by that date so it is reasonable to expect it to have put in place the necessary steps to enable it to comply with the agreed terms of settlement.

[9] When entering into the RoS Coverall Cleaning had already accounted for the delays that may result from the involvement of the Australian parent company because it changed the timeframe for paying the compensation from seven to 14 days.

[10] Coverall Cleaning already had Ms Atkinson's bank details because it had employed her until shortly before the RoS was entered into. Those details had not changed. It had from 25 July to have asked Ms Atkinson to confirm her bank account details but it did not do so.

[11] The RoS made it clear Ms Atkinson was to be paid the compensation, so I do not accept Coverall Cleanings claim that confusion over who was to be paid caused or contributed to the breach. Again it had from 25 July to have cleared up any confusion it may have been suffering with Ms Atkinson. It could also have read clause 6 of the RoS was stated that compensation was to be paid to Ms Atkinson.

[12] Mr Kullin says the bank transfer between Australia and New Zealand took four days. That does not explain why the RoS was breached because Coverall Cleaning had more than enough time after receiving the signed RoS on 01 August to have ensured the compensation funds arrived in New Zealand in time to pay Ms Atkinson by 15 August.

[13] I do not accept that the Australian director's reluctance to transfer the settlement funds to New Zealand without first seeing the original signed RoS explains

the breach. Clause 7 of the RoS expressly recorded that “an electronically scanned and signed RoS is sufficient for the purposes of settlement.” Coverall Cleaning had therefore already agreed to pay out based on an electronic copy of the signed RoS so the original RoS did not need to be, and was not in fact, provided to the parties.

[14] I also consider it unreasonable for an Australian director to delay paying Ms Atkinson her compensation because he had decided to seek his own accountancy advice as to whether or not tax should be deducted from her compensation. The Statement in Reply says that decision delayed Ms Atkinson’s payment by “at least a further 5 days.”

[15] Coverall Cleaning was legally represented so it could have quickly and easily confirmed with its own New Zealand based employment lawyer that tax was not to be deducted from Ms Atkinson’s compensation.

Orders

[16] I find Coverall Cleaning breached the RoS and that it did not have any good reason for doing so. Ms Atkinson was put to considerable inconvenience and she suffered serious embarrassment because she did not receive her compensation on the due date. It is an aggravating feature that Coverall Cleaning had been put on notice of the importance of paying Ms Atkinson her compensation on the due date.

[17] I consider it appropriate to impose a penalty on Coverall Cleaning to signify disapproval of its actions and to send a message to others out there who may be inclined to take a relaxed approach to their obligations under a RoS. A RoS imposes legally binding obligations on the parties to it and breaches of a RoS are likely to attract a penalty.

[18] The maximum penalty is \$20,000 for a company such as Coverall Cleaning.

[19] I order Coverall Cleaning to pay a penalty of \$2,000 under s.149(4) of the Act for breaching the RoS it entered into with Ms Atkinson. I order that within ten days of the date of this determination Coverall Cleaning must pay \$1,000 of the penalty

directly to Ms Atkinson. The \$1,000 balance of the penalty must be paid to the Authority for payment into the Crown Bank Account.

Costs

[20] Ms Atkinson has been invoiced \$2,025 by her representative for matters involving the breach of the RoS. She has also incurred the \$71.56 filing fee.

[21] Ms Atkinson as the successful party is entitled to a contribution towards her legal costs. I order Coverall Cleaning to pay Ms Atkinson \$750 plus \$71.56 towards her legal costs.

Rachel Larmer
Member of the Employment Relations Authority