

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2017] NZERA Wellington 60
3000103

BETWEEN PATRICIA BAYLISS
Applicant

AND CAMPANIA LIMITED T/A
SKIDS NEWLANDS
Respondent

Member of Authority: Trish MacKinnon

Representatives: Applicant in person
 No appearance for Respondent

Investigation Meeting: On the papers

Determination: 14 July 2017

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Patricia Bayliss and her former employer, Campania Limited trading as Skids Newlands (Campania) entered into a Record of Settlement on 19 October 2016.

[2] The settlement was made under the auspices of a mediator from the Ministry of Business, Innovation and Employment (MBIE) who, before he signed the settlement agreement, certified that he had explained to the parties the effect of ss.148A, 149(1) and (3) of the Employment Relations Act 2000 (the Act) and was satisfied that the parties understood the effect of those sections and had affirmed their request for him to sign the agreed terms of settlement.

[3] The effect of s. 149(3) of the Act is that agreed terms of settlement, once signed by an MBIE mediator are final and binding, may not be cancelled under s.7 of the Contractual Remedies Act 1979, and may only be brought before the Authority or Court for enforcement purposes.

[4] The terms of settlement entered into by the parties in this instance entailed, *inter alia*, the provision by Campania of a Certificate of Service, within 14 days of the date the Record of Settlement was signed, stating the period she was employed, the position she held, and that she resigned. It also provided for the payment of the compensatory sum of \$1,500 in terms of the provisions of s.123(1)(c)(i) of the Act. That payment was to be made within 14 days of the date the Record of Settlement was signed.

[5] The Record of Settlement was signed by Ms Bayliss and the sole director of Campania, Neil Hancock. Ms Bayliss says she has not received either the Certificate of Service or the compensatory sum of \$1,500. It is unnecessary to disclose the other terms of the Record of Settlement in respect of which no claims have been made.

[6] Ms Bayliss' statement of problem seeking compliance with the terms of settlement was served on Campania at its address for service as specified in the New Zealand Companies Office register. When no response was received, an Authority Officer contacted Mr Hancock by email using an address supplied by Ms Bayliss.

[7] Mr Hancock responded by email and advised the best address for the company was its postal address which he supplied. Documentation sent to that address has been signed for, but there has been no further contact from Mr Hancock. He has not provided a statement in reply and did not attend a telephone conference directed by the Authority at which it was decided this matter would be determined on the papers. Nor has he responded to subsequent correspondence from the Authority.

[8] I am satisfied from the statutory declaration provided by Ms Bayliss that Campania has not provided the Certificate of Service or paid the \$1,500 compensatory sum agreed in the Record of Settlement. She is entitled to both those agreed terms.

[9] Accordingly Campania Limited trading as Skids Newlands is ordered, under s.137 of the Act, on or before 4 August 2017, to:

- a. provide Ms Bayliss with a Certificate of Service in accordance with clause (4) of the Record of Settlement dated 19 October 2016; and
- b. pay Ms Bayliss the sum of \$1,500 under s.123(1)(c)(i) of the Act in accordance with clause 5(c) of the Record of Settlement dated 19 October 2016.

[10] Failure by Campania to comply with these orders may result in Ms Bayliss applying to the Employment Court. The Court's powers under s.140(6) of the Act include ordering that the person in default be sentenced to a term of imprisonment not exceeding three months and/or a fine not exceeding \$40,000.

Costs

[11] Ms Bayliss represented herself and no issue as to costs arises other than in respect of the filing fee. Campania Limited trading as Skids Newlands is further ordered to reimburse Ms Bayliss that fee in the sum of \$71.56.

Trish MacKinnon
Member of the Employment Relations Authority