

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 55
3023751

BETWEEN BELLCOST LIMITED
 Applicant

AND CATHERINE DEAN
 Respondent

Member of Authority: Vicki Campbell

Representatives: Sonya Costello for Applicant
 Kerry Single for Respondent

Investigation Meeting: 20 February 2018

Oral Determination: 20 February 2018

Record of Oral
Determination: 20 February 2018

RECORD OF ORAL DETERMINATION OF THE AUTHORITY

- A. Bellcost Limited’s application for a compliance order and penalty against Ms Dean is declined.**

- B. Ms Dean’s application for a compliance order and penalty against Bellcost Limited is declined.**

- B. Costs lie where they fall.**

Employment relationship problem

[1] On 19 June 2017 the parties entered into a binding record of settlement which included the following statements:

1. These terms of settlement and all matters in respect of this settlement shall remain, so far as the law allows, strictly confidential to the parties.

...

5. Neither party shall make disparaging remarks about the other.

[2] Bellcost Limited says Ms Dean has breached clause 1 of the record of settlement and has asked the Authority to impose a penalty on her for the breach. Ms Dean denies she has breached the record of settlement and has counterclaimed against Bellcost for alleged breaches of clause 5 of the record of settlement and also seeks the imposition of a penalty.

Issue

[3] In order to resolve these claims I must determine the following questions:

- a) Did Ms Dean breach clause 1 of the record of settlement and if so, what if any penalty should be imposed?
- b) Did Bellcost breach clause 5 of the record of settlement and if so what if any penalty should be imposed?
- c) Should costs be awarded?

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded all the evidence received from Bellcost and Ms Dean but has stated findings of fact, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result.

Breach of clause 1 of the record of settlement

[5] On or about 4 January 2018 Ms Costello a director and shareholder of Bellcost, was advised by a Bellcost employee that an employee employed by the Ngatea 4 Square that she had become aware a payment had been made to Ms Dean. Ms Costello formed the view that Ms Dean must have been talking about the terms of the record of settlement.

[6] Ms Costello met with the 4 Square employee who told Ms Costello that Mr Dean, Ms Dean's husband, was delivering milk at the 4 square and had told her that Hauraki Takeaways had made a payout to Ms Dean.

[7] Mr Dean left his employment as a delivery driver delivering milk in May 2017 which is before the record of settlement was entered into by the parties. Mr Dean's evidence, which I accept as more likely, is that he did not tell the 4 Square employee the quantum paid under the record of settlement but did tell the employee that a payout had been made. It is more likely than not that this conversation took place while Mr Dean was in the store shopping.

[8] Mr Dean told me he had read the record of settlement and was aware of the clause relating to confidentiality. Having received a copy of the terms of the record of settlement Mr Dean was bound by the confidentiality of its terms.

[9] I am satisfied Mr Dean told a third person that a payout was achieved. The advice normally given to people signing records of settlement is that the most they can say is that the parties have resolved their differences. However, Mr Dean was not present at the mediation where such advice would have been discussed with the parties.

[10] I find the disclosure by Mr Dean was general and not such that the terms of the record of settlement could be said to have been breached.

[11] Bellcost Limited's application for a compliance order and penalty is declined.

Breach of clause 5 of the record of settlement

[12] Ms Dean claims Bellcost has breached clause 5 of the record of settlement in that it has made disparaging comments about her to the staff who work for Bellcost in its kitchen. Ms Dean has not established to my satisfaction that Bellcost has engaged in making disparaging comments about her.

[13] Ms Dean's application for a compliance order and penalty is declined.

General

[14] Both parties are reminded of their obligations under the record of settlement. Established breaches will be treated seriously by the Authority and the Court. In cases where breaches are established the parties can expect financial penalties to be imposed to act as a disincentive for others who may be inclined to breach their record of settlement obligations.

Costs

[15] Given the parties respective success in this matter costs will lie where they fall.

Vicki Campbell
Member of the Employment Relations Authority