

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 179
3122518

BETWEEN YASH BHAMBLANI
Applicant

AND WALOND LIMITED
Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
JJ van Vuuren, advocate for the Respondent

Investigation: On the papers and by case management conference

Date: 3 May 2021

DETERMINATION OF THE AUTHORITY

- A. Within seven days of the date of this determination Walond Ltd (Walond) must deliver to Yash Bhamblani the certificate of service it had agreed to provide to him.**
- B. By no later than 28 days from the date of this determination Walond must pay \$500 to the Authority as a penalty for breach of a term of settlement in an agreement certified under s 149 of the Employment Relations Act 2000.**
- B. Walond must also reimburse Yash Bhamblani for the fee of \$71.56 he paid to lodge his application in the Authority.**

Employment Relationship Problem

[1] On 25 February 2020 Yash Bhamblani and Walond Limited (Walond) reached a full and final settlement of all matters between them arising out of their employment relationship.

[2] The terms of their agreement were certified by a Ministry of Business employment mediator under s 149 of the Employment Relations Act 2000 (the Act). Such certification has the effect of making those agreed terms final, binding and, except for the purposes of enforcement, not able to be brought before the Authority. The Act also provides that a person, which includes the legal personality of a registered company, is liable to penalty for breaching a term of a certified agreement.¹

[3] In this case Walond promptly made some agreed payments to Mr Bhamblani within an agreed timeframe but did not provide him with a certificate of service it had agreed to issue within seven days of signing their agreement, that is by 3 March 2020. The certificate was to set out his dates of employment, position held, description of duties and confirm he had resigned.

[4] Mr Bhamblani did not contact the company about this failure at the time. Some seven months later he lodged an application to the Authority asking for a penalty to be imposed on Walond for breach of the agreed term of settlement.

[5] In its statement in reply, lodged on 2 December 2020, Walond said the certificate had been prepared by 2 March. It provided the Authority with copies of email correspondence exchanged at the time between a local branch manager and its head office about those arrangements and a copy of a certificate of service, with all the required details, signed by the manager and dated 2 March 2020. However, on checking its email system, Walond had been unable to confirm the approved version of the certificate had been emailed to Mr Bhamblani. Walond said it was unable to offer an explanation as to why the document was not sent to him other than to say it was an innocent mistake.

[6] Walond noted that the first it heard of Mr Bhamblani's concern about not getting the certificate it failed to send him in early March 2020 was when the Authority sent the company a copy of the statement of problem he had lodged in October 2020.

¹ Employment Relations Act 2000, s 149(4).

Walond suggested the problem could be resolved by the Authority making a compliance order.

Authority investigation

[7] By agreement, confirmed in a case management conference by telephone with Mr Bhamblani and Walond's representative on 30 April 2021, this matter has been dealt on the basis of the discussion in that conference and on the papers.

Orders

[8] As set out in the orders made at the head of this determination Walond must send Mr Bhamblani the certificate of service prepared and signed by the relevant manager on 2 March 2020. It must also pay a penalty for its breach of the agreed term.

[9] Factors to weigh in determining an appropriate penalty are identified in s 133A of the Act and in Employment Court decisions applying the statutory criteria and other relevant considerations.²

[10] Imposing a penalty in this case was appropriate as a deterrence to parties generally from failing to do what they have agreed to do in a certified agreement. Such agreements are the means by which many thousands of employment relationship problems are formally resolved every year. Because the certification process is intended to provide finality and certainty for all parties, it is important agreed terms, including timeframes, are complied with in full.

[11] The amount of penalty imposed is modest. Walond's omission appeared careless and inadvertent, not intentional. Although it was an inconvenience for him, Mr Bhamblani accepted that not having the certificate by the promised time had not caused any significant loss or damage to him. It had not caused problems for him in gaining subsequent employment. Getting it now was, however, still of potential use to him if he needed to confirm previous work experience when seeking future employment opportunities.

[12] No information showed Walond had committed similar prior breaches or would not be able to pay a penalty. It had however failed to mitigate potential adverse effects

² *Boorsboom v Preet PVT Limited* [2016] NZEmpC 143 at [138]-[151], *Nicholson v Ford* [2018] NZEmpC 132 at [18] and *Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12 at [19].

of the breach by not sending Mr Bhamblani the certificate once it learned in late October 2020 of its oversight or mistake. Instead of simply sending him the certificate then, it suggested the Authority issue a compliance order and then waited to see what happened. No such order should have been needed. Walond could have fixed the omission itself several months ago.

[13] Weighing the relevant factors, \$500 was an appropriate amount in this case to mark the breach and to act as a deterrence to others from failing to take care to complete all agreed terms within the agreed timeframes. The penalty must be paid to the Authority within 28 days of the date of this determination and, on recovery of that amount, paid by the Authority to a Crown Bank Account.³

Expenses

[14] Mr Bhamblani incurred the expense of paying \$71.56 to lodge his application in the Authority. Walond must reimburse him for that amount.⁴

Robin Arthur
Member of the Employment Relations Authority

³ Employment Relations Act 2000, s 136(1).

⁴ Employment Relations Act 2000, Schedule 2, clause 15(1).