

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 306
5419941

BETWEEN MICHAEL JOHN BURNS
Applicant

A N D SURGICAL COURIERS
LIMITED
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Applicant in person.
No appearance on behalf of respondent

Investigation Meeting: 18 July 2013 in Auckland

Date of Determination: 18 July 2013

DETERMINATION OF THE AUTHORITY

- A. The respondent, Surgical Couriers Limited (Surgical Couriers) is ordered to comply with the settlement agreement dated 20 March 2013 made under s149 of the Employment Relations Act 2000 (“the Act”).**
- B. Surgical Couriers is ordered to pay the applicant, Mr Michael Burns the sum of \$18,193.76 net within 28 days of this determination.**
- C. Surgical Couriers is ordered to reimburse Mr Burns for the cost of the filing fee of \$71.56.**

Non-appearance of respondent

[1] The respondent, Surgical Couriers Limited (Surgical Couriers) failed to attend the investigation meeting on 18 July 2013. I am satisfied that Surgical Couriers was properly served with the statement of problem and subsequent correspondence from the Authority together with a notice of investigation meeting.

[2] In those circumstances, I proceeded to investigate the matter in the absence of Surgical Couriers.

Employment Relationship Problem

[3] On 20 March 2013, a record of settlement pursuant to s.149 of the Employment Relations Act 2000 (“the Act”) was entered into by the parties and signed by a mediator¹. The terms of the settlement agreement signed by the parties stated:

1. *The settlement is final and binding on and enforceable by us; and*
2. *except for enforcement purposes, neither of us may seek to bring those terms before the Authority or Court whether by action, appeal, and application for review, or otherwise; and*
3. *the terms of the settlement cannot be cancelled under section 7 of the Contractual Remedies Act 1979; and*
4. *that section 149(4) provides that a person who breaches an agreed term of settlement to which sub-section (3) applies is liable to a penalty imposed by the Authority.*

[4] The settlement agreement was certified by a mediator employed by the Chief Executive of the Ministry of Business, Innovation and Employment to provide mediation services under the Act. Pursuant to the record of settlement, Surgical Couriers agreed to pay Mr Burns outstanding wages owed, in full, by 30 April 2013. Mr Noel Burgess, Director of Surgical Couriers personally guaranteed payment. However, no payment has been made by Surgical Couriers or by Mr Burgess to Mr Burns.

[5] I am satisfied that Surgical Couriers still owes Mr Burns the sum of \$18,193.76 under the record of settlement.

¹ 5412746

[6] I order Surgical Couriers to pay Mr Burns the sum of \$18,193.76 within 28 days of this determination together with the cost of the filing fee of \$71.56.

Anna Fitzgibbon
Member of the Employment Relations Authority