

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 613
3366323

BETWEEN MARCUS DE THIERRY
 Applicant

AND KAIMAI KAURI LIMITED
 Respondent

Member of Authority: Rowan Anderson

Representatives: Alex Kersjes, advocate for the Applicant
 Marion Brown for the Respondent

Investigation Meeting: On the papers

Submissions and other
information received: Up to and including 3 September 2025

Determination: 1 October 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mr De Thierry has lodged a statement of problem claiming that Kaimai Kauri Limited (KKL) has breached the terms of a settlement reached in accordance with s 149 of the Employment Relations Act 2000 (the Act). The alleged breach relates to the non-payment of sums agreed to be paid to Mr De Thierry in accordance with the settlement agreement.

[2] KKL has not lodged a statement in reply and has not meaningfully engaged with the Authority's investigation.

The Authority's investigation

[3] A case management conference was held on 5 June 2025 to discuss the Authority's investigation of the compliance matter. The Authority attempted to call the respondent. However, those attempts were unsuccessful, and the conference call proceeded in the absence of a representative for KKL. Written directions were issued on 9 June 2025 with the matter to be dealt with on the papers.

[4] Mr De Thierry lodged an affidavit in support of his claims. No material was received from KKL. KKL has not lodged a statement in reply and have not otherwise meaningfully engaged with the Authority's investigation.

[5] I am satisfied the KKL were served with the relevant notices and other material relating to this matter, including the statement of problem, affidavit, and notice of directions. On 17 June 2025, Ms Brown copied the Authority into an email to Mr De Thierry's representative proposing resolution by way of payment plan. Further directions were issued on 12 August 2025 following the provision of a short adjournment so that the parties should endeavour to reach a resolution. On 28 August 2025, Ms Brown emailed the Authority advising a response would be forthcoming. Ultimately no submissions were received from KKL and the parties were advised that the Authority would proceed with making a determination.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Issue

[7] The issue for investigation and determination is whether KKL has breached s 149(3) of the Act by failing to make payment of two sums (\$2,500 as compensation and \$3,000 plus GST relating to costs) due under the settlement agreement? If so, whether any compliance orders should be made and/or penalties imposed upon KKL?

Consideration

Has KKL breached the terms of the settlement agreement?

[8] I am satisfied that there is a binding settlement agreement for the purposes of s 149 of the Act. That settlement agreement was signed, on 24 February 2025, for both parties and by a Mediator from the Ministry of Business, Innovation, and Employment.

[9] Clauses 2 and 3 of the settlement agreement required KKL to make payment to Ms De Thierry of \$2,500 (in terms of s 123(1)(c)(i) of the Act) and \$3,000 plus GST (upon receipt of an invoice), within 14 days.

[10] I am satisfied, based on Mr De Thierry's affidavit and the relevant correspondence, that the sums due have not been paid. The sums due have not been paid and I consider the making of compliance orders appropriate.

Penalty

[11] Mr De Thierry seeks the imposition of a penalties against KKL. Having considered the matter, I note that there is considerable importance in the reliance on s 149 settlement agreements. Failure to comply with obligations reached in terms of such settlements are a serious matter. It is also the case that the settlement agreement was reached some significant time ago and that the sums remain due. While not strictly in evidence, there is some suggestion that KKL has had difficulty in securing the sums necessary to make payment.

[12] In all of the circumstances, I consider it appropriate to reserve the issue of penalties pending the time I have allowed for compliance. To be clear, should compliance not be achieved within the relevant 14-day period by KKL making the relevant payments that are due, then the Authority will further consider the issue of penalties. On the basis that compliance is achieved in accordance with the below order, I would likely decline to issue penalties.

[13] The claim relating to penalties is reserved.

Order

[14] Kaimai Kauri Limited are required to comply with the orders made by the Authority, within 14 days of this determination, by making payment of the sums required by clauses 2 and 3 of the settlement agreement, being \$2,500, and \$3,000 plus GST, respectively.

Costs

[15] Costs were claimed in the statement of problem lodged. However, no further information has been provided in relation to that issue. Costs, if any, are likely to be minimal if granted. The issue of costs is reserved and the parties, if the matter is in issue, should endeavour to reach agreement on the issue.

[16] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr De Theirry may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination.¹ From the date of service of that memorandum FFL will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

Rowan Anderson
Member of the Employment Relations Authority

¹ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1