

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 560
3150983

BETWEEN XINXIN GUO
Applicant
AND BEST CHOICE LIMITED
Respondent

Member of Authority: Robin Arthur
Representatives: Johnny Wang for the Applicant
No attendance for the Respondent
Investigation Meeting: 14 December 2021
Determination: 15 December 2021

DETERMINATION OF THE AUTHORITY

- A. Best Choice Limited must pay \$13,321 to Xinxin Guo by no later than 21 January 2022.**

Employment Relationship Problem

[1] Xinxin Guo applied to the Authority for orders requiring Best Choice Limited (BCL) to complete payments due under a record of settlement signed by the parties on 23 April 2021. The agreement was certified by a mediator under s 149 of the Employment Relations Act 2000 (the Act) so its terms are final, binding and enforceable.

[2] Under that agreement BCL was due to complete payment of certain agreed instalments to Ms Guo by no later than 31 July 2021. In September 2021 Ms Guo applied to the Authority for enforcement of the agreement because BCL had paid her only around one fifth of the agreed total amount.

[3] An Authority Officer was able to contact BCL's director, Jingli Dong, by telephone to confirm Ms Guo's statement of problem could be served by email to a company email address. BCL was served by that means but did not lodge a statement in reply.

[4] In early December BCL made a further payment to Ms Guo but more than half of the amount agreed to be due to her remained outstanding.

[5] The parties were advised by email that the Authority would consider the matter in a telephone conference at 4pm on 14 December 2021. Ms Dong did not respond to the Authority's email about that conference call or subsequent phone calls. Between 4pm and 4.30pm on 14 December three attempts were made to contact Ms Dong without success. Voice mail messages were left for her advising that the conference call would proceed in her absence. I went ahead with the call at 4.30pm and spoke to Ms Guo.

[6] Ms Guo confirmed no further payments had been made. She said that BCL's accountant had contacted her recently and told her the amount due could be paid before the Chinese New Year, that is before 1 February 2022.

[7] In the absence of any information to the contrary from BCL, Ms Guo's evidence about the outstanding amount due is accepted. Agreements made and certified under s 149 of the Act are binding and enforceable so an order requiring BCL to complete payment was appropriate.

Order

[8] BCL is ordered to comply with the terms of the certified settlement agreement by paying the outstanding sum of \$13,321 to Ms Guo by no later than Friday, 21 January 2022.¹

Claim for a penalty

[9] A party who breaches an agreed term of settlement in a certified agreement is liable to a penalty. In the case of a company, a penalty of up to \$20,000 may be imposed for the worst cases and lower amounts for less severe cases.

¹ Employment Relations Act 2000, s 137(1) and (3).

[10] In the conference call Ms Guo advised that she wished to seek a penalty against BCL for not paying the amount due to her under the settlement agreement by the required date. Since the call, Ms Guo has confirmed her claim for a penalty in writing.

[11] However Ms Guo also indicated that she would not wish to pursue the penalty claim if BCL paid the settlement money due to her by the date set by the Authority's order, that is by 21 January 2022. For that reason I have adjourned consideration of the penalty claim for an investigation meeting to be held on Friday, 28 January 2022.

[12] A Notice of Investigation Meeting is to be issued for 28 January 2022. If the payment ordered to be made by 21 January 2022 is paid, Ms Guo is expected to promptly advise the Authority and confirm whether she wishes to withdraw her penalty claim or to proceed with an investigation meeting.

Robin Arthur
Member of the Employment Relations Authority