

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 758  
3390144

BETWEEN	HBM Applicant
AND	STRINGER CONSTRUCTION LIMITED Respondent

Member of Authority:	Helen van Druten
Representatives:	HBM as the Applicant Matthew Stringer for the Respondent
Investigation Meeting:	On the papers
Submissions received:	Up to 20 October 2025 from the Applicant Up to 31 October 2025 from the Respondent
Determination:	25 November 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] HBM claims that Stringer Construction Limited (SCL) has not complied with a Record of Settlement (ROS) signed by the parties on 18 June 2025 and certified by a mediator under s 149 of the Employment Relations Act 2000 (the Act). HBM also seeks a penalty and costs.

[2] In his statement in reply of 22 July 2025, Mr Matthew Stringer (as director of SCL) confirmed that SCL did not pay the amount it agreed to pay HBM under clause 2 of the ROS by the due date of 5 July 2025. The full amount remains unpaid.

[3] Although the ROS included a confidentiality clause, it is necessary for this determination to refer to details of relevant terms.

## **The Authority's investigation**

[4] A case management call was held on 6 October 2025. Despite confirmation of attendance, there was no appearance for SCL. Following discussion with HBM during the call, it was agreed that the matter would be determined 'on the papers'. In the Authority direction issued following the call, SCL was invited to make submissions by 21 October 2025 and particular attention was drawn to relevant sections of the Act relating to consideration of penalties.<sup>1</sup>

[5] Written submissions were received from both parties. Whilst I have not referred to all the submissions made by the parties; I have fully considered them.

[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.

## **Issues**

[7] The issues for determination are:

- (a) whether a compliance order should be made to enforce the ROS signed by the parties on 18 June 2025; and
- (b) whether a penalty and/or costs should be awarded.

## **Application for non-publication order**

[8] Having regard to the terms of settlement, I considered the application by HBM for non-publication of his name in this determination. SCL opposed anonymisation unless both parties were anonymised on the basis that both parties reputation would be equally affected.

[9] The principle of open justice is fundamental and the approach adopted in *MW v Spiga* is well established in relation to non-publication orders in the employment jurisdiction.<sup>2</sup> This approach requires me to consider whether there is reason to believe that the specific adverse consequences could reasonably be expected to occur and

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<sup>1</sup> In particular, Mr Stringer's attention was drawn to ss 133, 133A and 134 of the Act.

<sup>2</sup> *MW v Spiga* [2024] NZEmpC 147.

whether these specific adverse consequences justify a departure from open justice in the circumstances of the case.<sup>3</sup>

[10] HBM claims that publication of his name would impact on his reputation and future employment prospects in a small industry. He further reasons that the breach of the ROS was not of his making and therefore he should not be disadvantaged by taking steps to enforce it.

[11] I am not satisfied by the second reason as this would apply to most compliance orders made and is not sufficiently weighty on its own to justify a departure from open justice principles. Based on other Authority decisions where non-publication is granted in relation to a compliance order application, there must be one or more specific factors that tip the balance in favour of non-publication.<sup>4</sup> There is nothing specific in the ROS or nature of that settlement supporting non-publication in this matter.

[12] However, there is a factor that weighs significantly in support of anonymisation for HBM. Mr Stringer made adverse comments about HBM in communications with the Authority. Whether those comments are justified or not, HBM remains in the same industry and I consider that there is a greater than usual likelihood that publishing HBM's name in this determination may impact his future career prospects when those are not relevant to this compliance order.

[13] Linked to the weight I place on this factor is the Court's comments on how the interest in open justice should be weighed:

The reality is that the routine online publication of decisions of the Employment Relations Authority and the Employment Court creates a search mechanism for those who wish to use it, for example, to screen applicants for employment. It has become increasingly well recognised that the spectre of publication puts many employees off pursuing their claims, which in turn raises important access to justice issues.<sup>5</sup>

[14] It is recognised that SCL is also impacted by this determination though had the terms of the ROS been complied with, this order would not have been necessary. On

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<sup>3</sup> Above n1 at [87] and [88].

<sup>4</sup> As an example, *UQB v Accident Compensation Corporation* [2025] NZERA 711.

<sup>5</sup> *Chief of Defence Force v Darnley* [2021] NZEmpC 40 at [3].

that basis, I do not consider that anonymisation for both parties or neither party are the only acceptable outcomes.

[15] For the reasons as outlined, I order, pursuant to clause 10 of the Second Schedule of the Act that HBM's name and any identifying details, other than appear in this determination, be prohibited from publication.

[16] Accordingly, a random generator has been used to refer to the applicant in these proceedings. HBM is a randomly generated name and does not resemble the name of the applicant.

## **Background**

[17] On 5 June 2025 HBM lodged a Statement of Problem in the Authority. The matter was referred to mediation, the matter was settled between the parties as recorded in the ROS and HBM subsequently withdrew his application in the Authority on 23 June 2025.

[18] The relevant clause of the ROS is as follows:

### **2. Payments**

2.1. Within 10 days of a mediator certifying this agreement in accordance with clause 8, the Employer will pay to the Employee:

(a) \$15,000 (without deduction) as compensation under section 123(1)(c)(i) of the Employment Relations Act 2000 (ERA); and

2.2. The payment made under clause 2.1 shall be made to the Employee's nominated bank account.

2.3. The Employee confirms that other than the amounts referred to in this Record of Settlement, the Employer does not owe them any further monies.

[19] The mediation certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms were subject to s 148A, s 149(1) and s 149(3) of the Act, namely that they:

- (a) were final, binding and enforceable; and
- (b) could not be cancelled; and
- (c) could not be brought before the Authority or the court for review or appeal, except for the purposes of enforcing those terms.

[20] No money was paid into HBM's account on 5 July 2025 as required by clause 2.1(a) of the ROS. A follow-up email was sent from HBM to Mr Stringer's representative on Monday 7 July 2025. Mr Stringer replied on the same day:

Hi [HBM], In response to your email to Alice this morning. Stringer Construction Ltd has no cash or assets available to pay the settlement. I am working through this with my accountant and will have an update for you by the end of next week, (she's away for school holidays so my apologies for the delay). Cheers

[21] On 8 July 2025 HBM lodged a new Statement of Problem in the Authority claiming that SCL was in breach of the Settlement Agreement as it had not paid the amount owed.

#### *Submissions made by SCL*

[22] On 27 October 2025, Mr Stringer submitted that at the time of signing the ROS he had every intention of paying the amount owed. Mr Stringer further claims that at the time of signing the ROS, he had not realised the extent of SCL's losses and that he could not pay what he had agreed with HBM.

[23] He submitted that after speaking to his accountant, his company is unable to pay the amount owed to HBM due to a number of external and internal factors. He provided his company profit and loss accounts to the Authority as evidence of the company's inability to pay.

### **Findings**

#### *Breach of ROS*

[24] The ROS is a legally binding and enforceable agreement and based on the evidence provided, SCL has breached clause 2 of the ROS by failing to pay the amount owed by 5 July 2025.

#### *Compliance order to be issued*

[25] Section 137(1)(a)(iii) of the Act gives the Authority power to order compliance where a person has not complied with any terms of settlement signed under s 149 of the Act. Having found the ROS has been breached, a compliance order should be issued to prevent recurrence by compelling SCL to meet its specific legal obligations.

[26] In the case management call on 6 October 2025, HBM indicated he would be open to payment by instalments and this was recorded in the Authority directions sent to SCL. There was no response on this from Mr Stringer or SCL and there was no attempt to pay any portion of the monies owed. I decline to exercise this discretion under s 138(4A) of the Act.

[27] The imposition of a compliance order is a serious matter. Should SCL fail to comply with the compliance order, the Employment Court has powers to impose a fine not exceeding \$40,000, order property to be sequestered, or impose a sentence of imprisonment not exceeding three months.<sup>6</sup> Alternatively, a certificate of determination may be obtained from the Authority and enforcement obtained in the District Court.

### *Penalty*

[28] Section 149(4) of the Act provides that a person who breaches an agreed term of settlement is liable to the imposition of a penalty. HBM seeks a \$20,000 penalty for breach of the ROS. This is the maximum penalty available for a company under s 135(2)(b) of the Act.

[29] While the profit and loss information provided to the Authority was brief, it does indicate that SCL has a significant financial deficit. While a penalty is likely appropriate, s 138(5) of the Act enables the Authority to adjourn any award of penalties.

[30] This provides SCL an opportunity to meet the requirements of this compliance order and to remedy its breach of a legally binding agreement with HBM.

[31] Mr Stringer claims that he was unaware of SCL's inability to pay at the time of signing the ROS with HBM. Given the information provided to the Authority by SCL, that seems extremely unlikely. The mediation took place on 18 June 2025 in response to the employment relationship problem filed with the Authority on 5 June 2025. Mr Stringer registered two new companies on 11 and 13 June 2025. Should penalties be considered, this will be relevant.

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<sup>6</sup> Employment Relations Act 2000, ss 139 and 140(6).

[32] Should the amount owed not be repaid in accordance with the compliance order, SCL is advised that steps taken to remedy this breach will be considered in any penalty to claim to determine the quantum of any penalty awarded.

### **Summary**

[33] SCL breached the ROS. Pursuant to section 137(2) of the Act, within 28 days of the date of this determination, SCL must comply with the ROS certified on 25 June 2025, by paying HBM \$15,000 into his nominated bank account number.

[34] Stringer Construction Limited is also ordered to pay reimbursement of the Authority filing fee of \$71.55 to HBM within 28 days of the date of this determination.

[35] The penalty claim is adjourned to enable the compliance order to be complied with. If this does not occur, HBM may ask the Authority to determine his penalty claim.

### **Costs**

[36] As HBM was self-represented, costs will lie where they fall.

Helen van Druten  
Member of the Employment Relations Authority