

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2019] NZERA 537  
3067892

BETWEEN

NICOLA HART  
Applicant

AND

INGREDIENTS PLUS (NZ)  
LIMITED  
Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in person  
Kristy Haynes, Representing the Respondent

Investigation Meeting: On the papers

Determination: 17 September 2019

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, Ms Nicola Hart, claims that the Respondent, Ingredients Plus (NZ) Limited (Ingredients Plus) failed to adhere to clauses 7 and 8 of the mediated settlement agreement.

[2] On 11 April 2019 a Record of Settlement was entered into under s. 149 of the Employment Relations Act 2000 (the Act). The Record of Settlement was signed by the Applicant and by Ms Kristy Haynes, People & Culture Manager, on behalf of Ingredients Plus. The Record of Settlement was also counter-signed by a Mediator employed by the Ministry of Business, Innovation and Employment on 18 April 2019.

[3] The issue which had been brought before the Authority by the Applicant is that the Respondent has not complied fully with clauses 7 and 8 of the Record of Settlement, which state:

7. Within seven days from the Termination Date, the Employer will pay the Employee for any outstanding pay and accumulated annual leave, calculated up to and including the Termination Date (subject to deduction for tax).

8. The Employer will provide to the Employee a certificate of service on or before one week from the date of the Agreement that details the period the employee was employed for along with a list of other duties the Employee performed whilst being employed.

[4] The Record of Settlement was certified under s 149 of the Act by the Mediator. That certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms:

- 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.

#### **Issues**

[5] The issues for determination are whether or not Ingredients Plus failed to comply with clauses 7 and 8 of the mediated settlement agreement and if so, what penalties should be awarded.

#### **Note**

[6] The parties agreed to the Authority determining this issue based on the Statement of Problem and the Statement in Reply, and on submissions from the parties.

#### **Background**

[7] The payment set out in clause 8 of the Record of Settlement was to be paid within seven days from the Termination Date which was set out in clause 6 of the Record of Settlement as 5 April 2019. Payment should therefore have been made by 12 April 2019.

[8] Ingredients Plus confirms that it did not make the payment until 7 May 2019 and states that the late date of payment was made at the request of Ms Hart's representative due to an earlier payment affecting other benefit payments Ms Hart was receiving.

[9] Ingredients Plus confirms that the Certificate of Service which had been agreed as set out in clause 8 of the Record of Settlement to be provided one week before the date of the

Record of Settlement i.e. on 4 April 2019 was provided three months after that date due to a clerical error.

[10] The Certificate of Service provides information on the period Ms Hart was employed and sets out her duties as required in clause 8 of the Record of Settlement.

[11] I determine that Ingredients Plus did not comply with clauses 7 & 8 of the Record of Settlement.

### **Penalty**

[12] Having considered the principles which should govern the imposition of a penalty<sup>1</sup>, I determine that a penalty of \$600.00 is appropriate.

**[13] I order that Ingredients Plus is to pay a penalty of \$600.00, of which 80% is to be paid to Ms Hart and 20% to the MBIE Trust Account. Payment is to be made within 28 days of the date of this Determination.**

### **Filing Fee**

**[14] Ingredients Plus is also ordered to pay Ms Hart the filing fee of \$71.56 within 14 days of the date of this Determination.**

### **Costs**

[15] While costs are reserved, I note here that, subject to her submissions, Ms Hart represented herself in this compliance application and, unless she incurred legal costs, it is unlikely she has grounds to claim a contribution to any fair and reasonable costs.

**Eleanor Robinson  
Member of the Employment Relations Authority**

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<sup>1</sup> *Borsboom (Labour Inspector) v Preet PVT Ltd and Warrington Discount Tobacco Ltd* [2016] NZEmpC 143