

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 66  
3273659

BETWEEN            JPI  
                                 Applicant  
  
AND                    VFU  
                                 Respondent

Member of Authority:    Philip Cheyne  
  
Representatives:        Mark Donovan, counsel for the Applicant  
                                 Gordon Paine, counsel for the Respondent  
  
Investigation Meeting:    On the papers  
  
Submissions received:    14 November 2024 from the Applicant  
                                 4 November 2024 from the Respondent  
  
Date of Determination:    14 February 2025

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]    The applicant applied to the Authority to investigate and determine her employment relationship problem. The respondent in its reply opposed the applicant's claims. Having reviewed the statement of problem and the statement in reply, the Authority directed the parties to mediation.

[2]    Despite mediation, matters were not resolved. The Authority then scheduled an investigation meeting and timetabled the exchange of statements of evidence and any further relevant documents. The applicant's statement was late and the respondent did

not lodge any statements of evidence before the investigation meeting scheduled for 22 and 23 August 2024.

[3] Over the weekend prior to the investigation meeting, the applicant sent an email to the Authority to advise that she was no longer represented by her lawyer. The Authority acknowledged the email on Monday morning and copied it to the lawyer for the respondent. In reply, the lawyer for the respondent advised the Authority that the matter had been settled on Friday 16 August 2024. In response, the applicant informed the Authority that she “did not sign or agree to settlement”. However, the investigation meeting had to be adjourned.

[4] The matter was reassigned to me. Arrangements were later made to investigate the respondent’s claim that the matter had been settled. In support, the respondent lodged and served an affidavit and documents while the applicant lodged and served an affidavit in opposition. There was also an exchange of submissions. This determination resolves the preliminary question of whether the parties have settled the matter.

[5] Counsel instructed now were not involved in the exchanges that gave rise to the preliminary question.

### **Is there a settlement agreement?**

[6] Parties are able to resolve employment relationship problems at any time directly between themselves or with mediation assistance, and often do. Many settlement agreements are entered into under s 149 of the Employment Relations Act 2000, but they need not be to have effect. The dispute here is whether exchanges between the lawyers then engaged got to the point of agreement. I will refer to them as the applicant’s representative and the respondent’s representative.

[7] There may have been earlier negotiations but, appropriately, that has not been canvassed in evidence.

[8] On Wednesday 14 August 2024 the respondent’s representative sent a settlement offer to the applicant’s representative. The offer was expressed to expire on Thursday 15 August at 4.00 pm. A proposed record of settlement was attached.

[9] On Friday 16 August the applicant's representative replied to say the applicant would accept the offer if the respondent would also provide a positive reference. The respondent's representative asked for details of the requested reference. The applicant's representative responded with details. That resulted in the respondent's proposed draft reference, sent at 3.23 pm on Friday afternoon.

[10] There were then phone calls between the representatives. The file note made by the respondent's representative indicates that they agreed on changes to the draft record of settlement.

[11] As well as the calls, the representatives exchanged emails. The applicant's representative outlined agreed amendments to the settlement agreement and stated, "If you could please adjust your original version of the document, I can arrange [the Applicant] to sign it".

[12] The final email was from the respondent's representative, sent at 4.16 pm on Friday 16 August 2024. It attached the amended settlement agreement, reflecting the earlier discussions and email. The amended settlement agreement was in the form of a record of settlement under s 149 of the Employment Relations Act 2000.

[13] The settlement agreement included the following terms:

13. The Parties agree ... that the Agreement may be executed in counterparts ...

14. Until this Agreement is signed by the Employee, the Agreement constitutes a confidential without prejudice save as to costs/Calderbank offer by the Employer to the Employee.

15. Once the Agreement is signed by the Employer and the Employee, the Agreement is complete and binding upon the Parties as a contract and/or by virtue of accord and satisfaction whether or not it is signed by a mediator as a record of settlement.

[14] The applicant did not sign the settlement agreement. The respondent did not send the applicant the reference it had prepared and did not take steps to pay the compensation stipulated. A mediator was not asked to sign the settlement agreement. However, the respondent says that the applicant's employment relationship problem

before the Authority must be treated as having been settled, either by accord and satisfaction or by estoppel.

[15] The difficulty with treating the settlement agreement as a concluded binding agreement amounting to accord and satisfaction is that it expressly provides that it constitutes an offer until signed by the employee.

[16] I am referred to *Chaugule v Sams Event Styling Limited* as a similar case.<sup>1</sup> However, in that case the employer affirmed the terms of an unsigned record of settlement by paying the first payment and part-paying some of the other payments set out in the record of settlement. In the present case, no payment was made. In addition, in *Chaugule* it appears that the record of settlement did not expressly say it constituted an offer until it was signed.

[17] The respondent also says that the applicant is estopped from reneging on the settlement agreement. To paraphrase for present purposes: the respondent must show that the applicant created or encouraged a belief by her words; that the respondent reasonably relied on that belief to its detriment; and that it would be unconscionable for the applicant to depart from that belief.<sup>2</sup>

[18] Here, the applicant through her representative at the time created and encouraged a belief by the respondent that she had settled the employment relationship problem before the Authority. At 12.11 pm on 16 August the applicant's representative told the respondent's representative that the compensation already offered would be accepted if a written and signed positive employment reference was provided. At 1.03 pm the applicant's representative outlined details of the reference that was sought. At 3.54 pm the applicant's representative said that if the record of settlement was adjusted as discussed, "I can arrange [Applicant] to sign it". In reliance on that statement, the respondent's representative sent the record of settlement as discussed to the applicant's representative at 4.16 pm.

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<sup>1</sup> *Chaugule v Sams Event Styling Limited* [2022] NZERA 315.

<sup>2</sup> *Singh v Trustees of the Wellington Rudolf Steiner Kindergarten Trust* [2017] NZEmpC 47 at 25.

[19] I find that the respondent reasonably relied to its detriment on its belief that the applicant had settled her employment relationship problem. It incurred costs to finalise the record of settlement and the reference. The signed reference has now been provided to the applicant, so she can use it. Any future proposal to settle the applicant's employment relationship problem could not include a positive reference, so would require additional compensation. The respondent has a contingent liability for the compensation that was agreed.

[20] I find it would be unconscionable to allow the applicant to resile from the representation that she had settled her employment relationship problem. The applicant offered to settle for the previously offered amount of compensation together with a positive reference. The exchanges between the representatives resolved the form of the reference. All the terms of the agreement were clear and in writing, with the applicant's signature just a formality. Permitting a party to renege on settling their employment relationship problem in the present circumstances could have a chilling effect on parties' ability to rely on representations made in settlement negotiations between representatives.

[21] The applicant points out that the respondent did not pay the compensation or contact her for payment details after they became aware that her representative was no longer acting for her. There is little weight in this point. From Monday 19 August 2024, counsel for the respondent sought a case management conference for the Authority to consider its contention that the matter had been settled on Friday 17 August. It was reasonable for the respondent to defer payment of the agreed compensation, pending the Authority's involvement. I do not accept counsel's submission that this was a tactic designed to disadvantage the applicant.

[22] The applicant says that she has no knowledge of the agreement to settle her claim and that she had not given instructions to her lawyer to settle on that basis. However, until their receipt on Monday 19 August 2024 of the applicant's Saturday 17 August advice to the Authority that her representative no longer acted for her, the respondent was entitled to think that the applicant's representative had instructions to settle the employment relationship problem on her behalf. In their dealings on Friday

17 August, the respondent's representative appropriately dealt with the applicant's representative in accordance with s 236 of the Employment Relations Act 2000.

[23] The applicant says that she takes umbrage at what she describes as a "threat" in the affidavit of the respondent's representative. I do not read the statement as a "threat". Confidentiality was part of the settlement, as is often the case. The parties would lose an ability to mutually agree confidentiality, if the substantive problem is investigated and determined by the Authority. There may be publicity, which may be adverse. The representative does not threaten anything. There is no reason to cross-examine the representative on that point.

[24] The point made by each party about additional costs need not be addressed at present.

### **Conclusion**

[25] I find that the applicant is estopped from denying that she has settled her employment relationship problem, on the terms set out in the record of settlement.

[26] This determination means that the respondent must pay the applicant the compensation set out at clause 1 of the record of settlement, but the applicant or her counsel will first need to provide payment details to the respondent's counsel. The applicant already has the signed reference. Leave is reserved if required to obtain payment.

[27] I am mindful that the settlement included confidentiality. The parties should not lose that arrangement, just because of the present disagreement. As the matter was not addressed in counsel's submissions, I make an interim order prohibiting the publication of the name of the applicant or the respondent, pending further order of the Authority.

[28] Costs are reserved. The parties are encouraged to resolve costs between themselves. If an Authority determination on costs is needed, the party who believes they are entitled to costs may lodge, and then should serve, a memorandum within 14

days of the date of this determination. From the date of service of that memorandum the other party will then have 14 days to lodge a reply.

Philip Cheyne  
Member of the Employment Relations Authority