



# New Zealand Employment Relations Authority Decisions

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## **Kahui v Haley Construction Limited (Christchurch) [2017] NZERA 1081; [2017] NZERA Christchurch 81 (29 May 2017)**

Last Updated: 10 June 2017

### IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2017] NZERA Christchurch 81  
3009294

BETWEEN CHRIS KAHUI Applicant

AND HALEY CONSTRUCTION LIMITED

Respondent

Member of Authority: Andrew Dallas

Representatives: Peter Cahill, Advocate for the Applicant

No appearance for the Respondent

Investigation Meeting: On the papers

Determination: 29 May 2017

#### DETERMINATION OF THE AUTHORITY

- A. **Haley Construction Limited (Haley) must comply with the Record of Settlement dated 12 July 2016 by paying Chris Kahui \$5,000 on or before 29 June 2017.**
- B. **Five percent interest is payable on the amount specified in (A) from 12 July 2016 until the amount is paid in full.**
- C. **Haley must also pay Mr Kahui \$718.75 as a contribution to the costs of his representation and \$71.56 as reimbursement of the Authority's filing fee on or before 29 June 2017.**

#### **Employment relationship problem**

[1] The parties entered into a Record of Settlement on 12 July 2016 which was signed by a mediator in accordance with the requirements of [s 149](#) of the [Employment Relations Act 2000](#) (the Act). Chris Kahui and Haley Construction Limited (Haley) Director, Simon Haley signed the Record of Settlement.

[2] Under the terms of the record of settlement, Haley was to pay Mr Kahui

\$5,000 in four instalments. As at the date of this determination, Haley has made no payments to Mr Kahui under the settlement.

[3] Mr Kahui, through his representative, said he had complied with his obligation under the settlement to return property, predominately tools, to Haley.

[4] Haley did not file a statement in reply to Mr Kahui's statement of problem dated 3 May 2017. I satisfied that Haley was properly served with the problem. Neither Mr Haley nor an authorised representative of Haley have made application to lodge a statement of reply out of time or otherwise make contact with the Authority.

[5] Having taken into account the surrounding circumstances outlined above, I decided to investigate Mr Kahui's employment relationship problem on the papers under [s 174D](#) of the [Employment Relations Act 2000](#) (the Act).

### **Compliance order**

[6] The Record of Settlement is a final, binding and enforceable document. For mediated outcomes to be successful, parties need to have confidence that records of settlement will be complied with. There is a significant public interest in this.

[7] It is appropriate to make a compliance order in the circumstance of this case. [8] Failure by Haley to comply with the compliance order may result in Mr Kahui

applying to the Employment Court to exercise its powers under [s 140\(6\)](#) of the Act. Remedies can include an order that the person in default be sentenced to imprisonment for a term not exceeding three months and/or a fine not exceeding

\$40,000.

### **Claim for "penalties"**

[9] Mr Kahui also sought the imposition of "penalties" against Haley for breach of record of settlement. Given a compliance order has issued and an award of interest has been made to Mr Kahui, it is not necessary to also impose a penalty at this stage.

### **Costs**

[10] Mr Kahui sought a contribution to the costs of his representation in bringing this compliance action. He said this was \$718.75. In the circumstances of the case, it is fair and reasonable to award him this amount. Haley must pay this amount to Mr Kahui on or before 29 June 2017.

[11] Mr Kahui sought reimbursement of the Authority's filing fee of \$71.56. This is fair and reasonable in all the circumstances. Haley must pay this amount to Mr Kahui on or before 29 June 2017.

Andrew Dallas

Member of the Employment Relations Authority