



[4] Other relevant provisions from the Record of Settlement are:

These terms of settlement and all matters discussed at mediation shall remain confidential to the parties.

Bean and Leaf Limited will provide Promot Kumar with a Certificate of Service; this should include his period of employment, position held, responsibilities and duties.

Should any prospective employer contact Holly Yu, she will confirm the contents of the Certificate of Service.

### **Compliance Order**

[5] Mr Kumar seeks a compliance order to ensure Ms Yu does not breach the terms of settlement in the future.

[6] Mr Kumar provided a recorded telephone conversation on his mobile phone during which he says a potential employer made contact with Ms Yu and was told of concerns an employee had raised about Mr Kumar's conduct when he was employed by her.

[7] Ms Yu initially disputed that she had said anything other than confirm the timeframe Mr Kumar had worked for her, briefly outlined his role and confirmed that Mr Kumar was competent at his abilities as a chef. However, on hearing the recorded telephone conversation at the investigation meeting Ms Yu acknowledged that she had said things outside those items specifically provided for in the terms of settlement.

[8] I find that Ms Yu breached the confidentiality of the agreement by referring to the concerns raised by other employees. It is clear from the recorded conversation however, that Ms Yu was uncomfortable talking about the issues with the caller, however, it was clearly unwise of her to speak at all about the concerns raised by her employees.

[9] The parties to the settlement agreement were bound to keep confidential the terms of the settlement and all matters discussed at mediation. This obligation was binding on both parties.

**Bean and Leaf Limited trading as Café Trends is ordered to comply with the Record of Settlement it entered into with Mr Kumar.**

**Positive reference**

[10] Mr Kumar seeks the production of a favourable reference. As explained to Mr Kumar at the investigation meeting I am bound by the remedies available under the Employment Relations Act 2000. Ordering the Respondent to provide a favourable reference is not within my jurisdiction.

**Claim for Damages**

[11] Mr Kumar seeks the payment of \$18,000 in damages arising out of lost ACC earnings. Mr Kumar says the loss came about as a result of Ms Yu breaching the confidentiality agreement when she advised ACC that he had resigned.

[12] It was common ground that Ms Yu was contacted by Ms Grace Moa, a Case Manager with ACC, on 17 July 2009. Ms Moa asked Ms Yu if Mr Kumar was still working for her. Ms Yu advised ACC that Mr Kumar had resigned and was no longer employed by her.

[13] I am satisfied Ms Yu did not disclose any aspect of the terms of settlement when she answered the question from ACC. By 17 July, when Ms Yu had the conversation with ACC, the fact that Mr Kumar was no longer working at Bean and Leaf was a fact independent from the mediation settlement agreement. If Ms Yu had disclosed the circumstances around how the resignation came about, then she would have been in breach of the settlement agreement. Ms Yu did not do that, she answered the question from ACC truthfully and without disclosing any of the circumstances.

[14] Mr Kumar provided the Authority with a copy of a letter he had received from ACC explaining the reasons for his ACC payment being stopped. The reasons set out in the letter are:

- Mr Kumar left New Zealand and travelled to Fiji in June. He failed to advise ACC of his departure;
- Mr Kumar's doctor had certified him fit for light duties or alternate duties from 15 June and as there was no proper diagnosis ACC was unable to extend his weekly compensation;
- A second medical certificate in July 2009 certified Mr Kumar fit for light or alternate duties and when this was discussed with Mr Kumar

he failed to advise ACC that he was no longer employed by the Respondent. That information only came to light when ACC made contact with Ms Yu.

[15] As the letter clearly indicates, the fact that Ms Yu advised ACC that Mr Kumar had resigned was not the reason his weekly compensation was stopped. The decision to stop his weekly compensation was made on 15 June which is one month before Ms Yu advised ACC Mr Kumar had resigned.

[16] Even if I had found that the action of Ms Yu was causative of Mr Kumar's weekly compensation payments being stopped, as I explained to Mr Kumar at the investigation meeting the only means of enforcement available are those provided for in s 151 of the Act. Such means are limited to either an order for compliance with the terms of settlement, or enforcement in the District Court of any monetary provisions in that settlement agreement. Apart from s 151 the only other remedy for a breach of an agreed term of settlement is a penalty provided for under s 149(a). There is no provision in the Act for an award of damages for a breach of a settlement agreement.

### **Costs**

[17] Mr Kumar shall have the lodgement fee on his application.

**Bean and Leaf Limited trading as Café Trends is ordered to pay to Mr Kumar \$70.00 being the lodgement fee on his application.**

Vicki Campbell  
Member of Employment Relations Authority