

	BETWEEN	JANENDRA KUMAR Applicant
	AND	FUTURE PRINT & DESIGN LIMITED Respondent
Member of Authority:	Eleanor Robinson	
Investigation Meeting:	15 June 2018 by telephone	
Determination:	15 June 2018	

ORAL DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 21 November 2017 a Record of Settlement was signed under s. 149 of the Employment Relations Act 2000 (the Act). The parties to the Record of Settlement were the Applicant, Mr Janendra Kumar, and the Respondent, Future Print & Design Limited.

[2] The Records of Settlement was signed by the Applicant and Mr Dave Datt, Principal, on behalf of Future Print & Design Limited. The Record of Settlement was also signed by a Mediator employed by the Ministry of Business, Innovation and Employment.

[3] The issue which had been brought before the Authority by the Applicant is that the Respondent has not complied fully with clauses 2 e) of the Record of Settlement. The Record of Settlement set out a payment schedule as follows:

2. That Future Print & Design Limited shall, without admission of liability, pay Janendra Kumar the sum of \$10,000.00 in terms of the provisions of s 123(1)(c)(i) of the Employment Relations Act 2000. This amount to be paid by way of Direct Credit and in accordance with the following schedule.

- a) A payment of \$2,000.00 within 7 days of the date thereof.*
- b) A further payment of \$2,000.00 on or before 20th February 2018;*
- c) A further payment of \$1,000.00 on or before 20th March 2018;*
- d) A further payment of \$1,000.00 on or before 20th April 2018;*

- e) A further payment of \$1,500.00 on or before 20th May 2018;*
- f) A further payment of \$1,250.00 on or before 20th June 2018;*
- g) A final payment of \$1,250.00 on or before 20th July 2018.*

[4] 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.

[5] I issued a determination dated 9 April 2018 ([2018] NZERA Auckland 114) in accordance with which I ordered Future Print & Design Limited to pay Mr Kumar the sum of \$2,400.00, being the outstanding sum in respect of the payments dated 20 February and 20 March 2018.

[6] I also ordered that the sum of \$71.56 be paid to Mr Kumar in respect of the filing fee.

[7] Both payments were to be made within 7 working days of the Date of the Determination.

[8] Mr Kumar said that he has received the amounts which were outstanding in accordance with the Record of Settlement and ordered to be paid by Future Print & Design Limited, albeit not within the 7 days ordered by the Authority. He had however not received the \$71.56 filing fee ordered in the 9 April 2018 determination.

[9] The claim now before the Authority is that Mr Kumar has not received the payment of \$1,500.00 due under clause 2 e) of the Record of Settlement.

[10] Mr Datt confirmed that the May payment due to Mr Kumar had not been made.

[11] I find that the sum of \$1,500.00 due under clause 2 e) of the Record of Settlement is outstanding.

[12] The further payments remain payable but are not outstanding as at the date of this determination.

Compliance Order

[13] I am satisfied that Future Print & Design Limited has not complied with clause 2 e) of the Record of Settlement, and that the amount of \$1,500.00 is outstanding and payable to Mr Kumar.

[14] I determine that the Respondent has failed to comply with clauses 2 e) of the Record of Settlement.

[15] In order to effect compliance with clauses 2 e) of the Record of Settlement, I therefore order Future Print & Design Limited to pay Mr Kumar, no later than 7 working days from the date of this determination, the outstanding amount due under clause 2 e) of the Record of Settlement, this being \$1,500.00.

Filing Fee

[16] Future Print & Design Limited is also ordered to pay Mr Kumar the filing fee of \$71.56 for this application in addition to the \$71.56 which had been ordered but has not been paid. Payment of both sums to be paid no later than 7 working days from the date of this determination.

Further Action

[17] Mr Kumar is advised that, in the event the further amounts due under the Record of Settlement are not paid at the dates specified, he may return to the Authority for further compliance.

Costs

[18] While costs are reserved, I note here that, subject to his submissions, Mr Kumar was not legally represented and, unless he incurred legal costs, it is therefore unlikely he will have grounds to claim a contribution to any fair and reasonable costs.

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