

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 123
3223839

BETWEEN KOK HONG LEON LE
Applicant

AND YOUR CAR NZ LIMITED
Respondent

Member of Authority: Alex Leulu

Representatives: Applicant in person
 Jack Ethan Harley, for the Respondent

Investigation Meeting: On the papers

Submissions and
documents received: 29 December 2023 and 9 February 2024 from the
 Applicant
 No information received from the Respondent

Determination: 01 March 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Kok Hong Leon Le was previously employed by Your Car (NZ) Limited (YCL). On 10 August 2022 Mr Le and YCL entered into a settlement agreement to resolve an employment relationship problem between them (the settlement agreement).

[2] Mr Le said YCL had breached the terms of the settlement agreement by failing to pay him sums of money that were due to be paid to him. As a result, he lodged an application to the Authority to issue a compliance order against YCL for payment of these outstanding amounts.

[3] YCL acknowledged its obligations in respect of the settlement agreement and admitted that it had failed to pay outstanding amounts to Mr Le in accordance with the settlement agreement.

The Authority's investigation

[4] In the interests of avoiding unnecessary costs and time, the parties agreed for the matter to be heard on the papers. The parties also agreed to lodging and serving of affidavits and supporting evidence to support their position. Mr Le lodged and served his affidavit and supporting evidence on 29 December 2023. No information was lodged by YCL.

[5] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[6] The issues requiring investigation and determination are:

- (a) Should a compliance order be issued against YCL for its failure to make payments in accordance with the settlement agreement between it and Mr Le; and
- (b) Should Mr Le's filing fee be reimbursed.

The settlement agreement

[7] The settlement agreement set out a number of agreed terms between Mr Le and YCL. It included a requirement for YCL to pay Mr Le \$5,000 without deduction. This amount was to be paid in two instalments with the first instalment of \$2,500 to be paid to Mr Le on 10 August 2022. The second instalment of \$2,500 was due to be paid to Mr Le on 10 September 2022.¹

[8] Mr Le said YCL had previously paid him the first instalment payment of \$2,500. His application to the Authority for compliance was in respect of the second instalment payment.

[9] The settlement agreement was not certified by a mediator under s 149 of the Employment Relations Act 2000 (the Act). The settlement agreement included the following provisions:

¹ Clause 3, Record of Settlement 9 February 2023.

Kok Hong Leon Le agrees, provided all outstanding fees are paid

- I have no claim for compensation for loss of office or otherwise against the Company.
- no moneys are owing to me by way of fees, salaries, or expenses.
- agree not to disclose any and all information covered by the agreement.

[10] The copy of the settlement agreement provided by Mr Le was not signed by YCL or its representative Jack Harley. In an email to the Authority on 12 July 2023, Mr Harley confirmed YCL's obligations in accordance with the agreement. Both parties also agree that the first instalment was made by YCL to Mr Le and the second instalment was due to be paid.

Compliance order

[11] There was no dispute that YCL had failed to pay the outstanding amounts in accordance with the settlement agreement. However, the Authority's powers of ordering compliance are restricted to the provisions of the Act.

[12] The Authority has the power to order compliance with any terms of settlement or decision that can be enforced by a compliance order under s 151 of the Act.² Section 151(1) and (2) of the Act limits the Authority's ability to order compliance to settlements signed by a mediator under s 149(3) of the Act.

[13] Because the settlement agreement was not certified by a mediator, the Authority has no jurisdiction to issue a compliance order in relation to the settlement agreement.

The Authority's powers of investigation

[14] The Act enables the Authority to make orders in any matter relating to an employment agreement which relate to contracts, including orders available under the Contract and Commercial Law Act 2017.³ In essence this is a dispute about the performance of a contract. There is no dispute there was a contract formed between Mr Le and YCL (in the form of the settlement agreement).

[15] Section 137 of the Act also provides the Authority the power to order compliance with a provision of any employment agreement. Settlement agreements not certified by a mediator are not strictly a provision of an employment agreement.

² Employment Relations Act 2000, s 137(1)(iii).

³ Employment Relations Act 2000, s 162.

Employment Court guidance has found such settlement agreements to be related to (and arise from) an employment agreement.⁴ This confers jurisdiction on the Authority to investigate matters arising from these types of agreements. Section 161(1)(r) of the Act confers jurisdiction on the Authority to take:

any other action (being an action that is not directly within the jurisdiction of the court) arising from or related to the employment relationship or related to the interpretation of this Act (other than an action founded on tort).

[16] The settlement agreement in this case arose from the employment relationship between Mr Le and YCL. The Authority has exclusive jurisdiction to make determinations about employment relationship problems.⁵

Conclusion

[17] Mr Le's claim for a compliance order was unsuccessful. However, the Authority is not bound to treat the matter as described by Ms Le in his statement of problem.⁶ It may decide the matter in another way to resolve the employment relationship problem.

[18] YCL breached the settlement agreement entered with Mr Le when it failed to pay Mr Le the second instalment of \$2,500. In accordance with s 162 of the Act, YCL is ordered to pay Mr Le the outstanding amount of \$2,500 within 21 days of this determination.

Costs and reimbursement of filing fee

[19] Neither party was represented and so there is no issue as to the costs.

[20] Since Mr Le's application was successful, it is appropriate that YCL reimburse him the filing fee of \$71.55 which is also to be paid within 21 days of the date of this determination.

Alex Leulu

⁴ *Kerr v Associated Aviation (Wellington) Limited* [2005] ERNZ 632 at [32] and [33].

⁵ *FMV v TZX* [2021] NZSC 102 at [58] and [64] and Employment Relations Act 2000, s 161.

⁶ Employment Relations Act 2000, s 160(3).

Member of the Employment Relations Authority