New Zealand Employment Relations Authority Decisions

Mahieu v Gilbert & Associates Limited (Christchurch) [2017] NZERA 1079; [2017] NZERA Christchurch 79 (24 May 2017)

Last Updated: 10 June 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2017] NZERA Christchurch 79
3000956

BETWEEN LYNDA MAHIEU Applicant

A N D GILBERT & ASSOCIATES LIMITED

Respondent

Member of Authority: David Appleton

Representatives: Carol Grant, Advocate for Applicant

Ian Gilbert, Advocate for Respondent

Investigation Meeting: 27 March 2017 at Christchurch

Submissions Received: 27 March 2017 from both parties orally.

Written submissions from the respondent on 4 May 2017 and from the applicant on 19 May 2017

Date of Determination: 24 May 2017

DETERMINATION OF THE AUTHORITY

A. **The respondent is to pay a penalty in the sum of $3,000 in accordance with the orders set out in this determination.**
B. **The respondent is to make a contribution towards the applicant's legal costs as provided for in this determination.**

Employment relationship problem

[1] The applicant, Lynda Mahieu, seeks the imposition of a penalty against the respondent for an alleged breach of a settlement agreement entered into between the parties under s.149 of the Employment Relations Act 2000 (the Act). The applicant

also seeks reimbursement by the respondent of the legal costs she has incurred in seeking the respondent's compliance with the settlement agreement.

[2] The respondent denies that it breached the settlement agreement and asserts that it was the applicant who was in breach of the agreement. It, in turn, seeks the imposition of a penalty against the applicant.

[3] The respondent also sought an order for Ms Mahieu's representative to issue a GST invoice to it relating to part of the settlement sums that the respondent paid to Ms Mahieu, but the Authority does not have the jurisdiction to make such an

order, regardless of merits.

Brief account of the facts

[4] On 7 November 2016 Ms Mahieu entered into terms of settlement pursuant to s.149 of the Act with the respondent company. The record of settlement was certified by a mediator pursuant to s.149(1) and (3) of the Act. Material terms of the terms of settlement were as follows:

1. These terms of settlement and all matters discussed in mediation shall remain, so far as the law allows, confidential to the parties and is entered into on a denial of liability basis.

2. GAL will pay Lynda, the compensatory sum of [redacted] in terms of section 123(1)(c)(i) of the Employment Relations Act

2000. This amount shall be paid to Lynda by way of direct credit

to her nominated bank account in two payments of [redacted] the first on or before 20 November 2016 the second on or before

20 December 2016.

3. GAL will without undue delay forward Lynda a Certificate of Service that records her payment of employment, position held tasks, undertaken [sic] and that she left employment as at 28 June

2016 by mutual agreement.

4. Having attended mediation and resolved their employment relationship problem Lynda and GAL undertake that when speaking of each other to third parties they will only do so in positive or neutral terms to the intent that they will not disparage one another.

[5] On 24 November 2016 Ms Grant emailed Mr Gilbert, director of the respondent company, saying that Ms Mahieu had not yet received the first payment due on 20 November. Ms Grant stated, *inter alia*, that if she did not hear from Mr Gilbert as to what had happened with the payment, then her client would consider it to

be a breach of the record of settlement and might seek penalties for the breach. Ms Grant received a response from the office manager saying that Mr Gilbert was away from the office.

[6] On 29 November 2016 Mr Gilbert sent an email to Ms Grant which contained the following statements:

It is not my position or inclination to advise your liar of a client as to where she is in breach of the agreement but until she decides to abide by the terms of the agreement then payment will unfortunately be delayed.

I advise I have waited for her to perform her side of the agreement and after her non-compliance I then had to enter hospital for an operation on Wednesday last week. I am now back at work and busy with more urgent matters than a defaulting liar.

Please advise me when your client will comply with the agreement terms.

[7] On 29 November Ms Grant responded (within 3 minutes of Mr Gilbert's email) asking him to advise "what breach that you are referring to that my client has made with supporting evidence in relation to the record of settlement".

[8] It appears that Ms Grant received no reply and so sent a further email on

2 December 2016 which stated, *inter alia*, that her client believed that she always had been and still was complying with the record of settlement and that her client considered his allegation to be a vexatious action as a way to avoid complying with the record of settlement. Ms Grant gave Mr Gilbert until Monday 5 December 2016 to comply with the record of settlement by paying the outstanding amount, failing which she would lodge an application with the Authority for enforcement, together with an application for penalties, damages and costs.

[9] On 5 December 2016 Mr Gilbert responded to Ms Grant saying:

I know of no obligation that requires me to assist your client in identifying where she has not complied with the agreement.

She also has a lawyer (yourself) who supposedly has the legal expertise to read and interpret agreements so that compliance is able to be ensured. I would suggest that you exercise that expertise and

1. Read the agreement and 2. Give effect to the agreement.

I therefore strongly suggest that you read the agreement to conform with the terms and conditions at which stage settlement will be

effected. I have not repudiated the agreement and I give you formal notice of that. I will always be truthful and honest and comply with the law unlike your client who is clearly a liar.

I assure you that I am not without wit in this regard and that the non- compliance by your client is of a sufficient scale that payment is not able to be given effect. Any court in the land would agree with me. Therefore the penalties and costs will clearly fall on your client and that is as it should be given her lies and dishonesty in her assertions in the first place.

You and your client have the clear ability to give effect to the agreement and I suggest you do so. Thank you for your notice, I give you notice that if you have not complied with the full terms of the agreement by Friday 9th December then I will cease correspondence until you do.

My suggestion Mrs Grant – just do it!

[10] On 9 December 2016 Mr Gilbert emailed Ms Grant in the following terms:

Mrs Grant

I have not had any communication with you or your client since

2 December 2016.

I have waited for a significant period of time for your client to conform to the agreement. She has not done so.

You have portrayed yourself as having the legal expertise to interpret and action agreements but you have failed to guide your client so that no agreement is able to be concluded.

Can you please read the agreement and give effect to the terms and conditions so that I can conclude this whole sorry affair with your lying toad of a client.

Thank you

Ian Gilbert

[11] Ms Grant lodged Ms Mahieu's application in the Authority on 8 December

2016. Mr Gilbert responded to the statement of problem by way of a letter to the Authority dated 13 January 2017. In this letter Mr Gilbert stated, *inter alia*, the following:

The settlement was very simple with Mathue [sic] only be required to do one thing on her part to give effect to the agreement. She was required in clause 2. to advise me of her nominated bank account.

...

I know of no obligation under statute or common law by which I am required to help her solicitor interpret the agreement nor am I obliged

to guide her solicitor in the settlement process. This request for assistance was not well received by me at all as I am extremely aggrieved at her client's lies and dishonesty relating to her retirement. Her lying was solely done to extract money from me as she did wish to retire and was never constructively dismissed.

[12] On 23 December 2016 Mr Gilbert had written to SB Law enclosing a cheque in the sum of $3,000. However, the cheque was made out to "L. Matthieu". This cheque was returned to Mr Gilbert under cover of a letter dated 17 January 2017 by Ms Grant pointing out that he had spelt her name incorrectly on the cheque (and, indeed, incorrectly in a different way in the accompanying letter). In her letter of 17

January Ms Grant also gave Mr Gilbert details of Ms Mahieu's bank account number.

[13] According to Ms Grant, on 10 February 2017 she made an open offer to settle payment of the settlement sum to her bank account, which had still not been paid by that point, together with legal fees in the sum of $1,500 plus GST. The respondent refused to pay this.

[14] Reference was made during the Authority's investigation meeting to without prejudice correspondence from Mr Gilbert to SB Law. Ms Grant asserts that privilege in this correspondence has been waived by Mr Gilbert. Mr Gilbert denies this.

[15] I determine that it is not necessary to consider the contents of the without prejudice letter, whether or not privilege had been waived, as sufficient information is contained in open correspondence between the parties to enable me to make a determination on the matters in question.

[16] Payment of the settlement sums were finally made by the respondent, in two equal tranches, the first received on 27

February 2017 and the second on 1 March

2017.

[17] Ms Grant asserts that the certificate of service had still not been provided, although Mr Gilbert said he had already provided it by post to Ms Mahieu the Wednesday before the Authority's investigation meeting. He handed over a further copy of it at the investigation meeting. Ms Mahieu did not say whether the terms of the Certificate were compliant with the requirements set out in the record of settlement.

Issues

[18] The Authority must determine the following issues:

(a) Did the respondent breach the settlement agreement?

(b) If so, should a penalty be imposed upon the respondent in respect of that breach?

(c) Should costs be awarded against the respondent in favour of Ms

Mahieu and, if so, in what amount?

(d) Did Ms Mahieu breach the settlement agreement?

(e) If so, should a penalty be imposed upon her in respect of such breach?

Did the respondent breach the terms of the settlement agreement?

[19] Clause 2 of the record of settlement required the respondent to pay Ms Mahieu the settlement sum in two equal tranches on or before two specified dates. It also required the respondent to make those payments by way of direct credit to Ms Mahieu's nominated bank account.

[20] When unpacked, the phrase "nominated bank account", requires that a bank account was to have been nominated. Whilst clause 2 of the record of settlement does not specifically state that Ms Mahieu had to nominate the account, that is the only sensible reading of the phrase "nominated bank account" as, clearly, it was not for the respondent to nominate that account.

[21] Whilst the duty on Ms Mahieu to nominate a bank account was not expressly stated, it was not unreasonable, in my view, for the respondent to wait for that account to be nominated. I accept the submissions of Mr Gilbert that it would not have been reasonable for him to have relied upon the details of the bank account number he had had for Ms Mahieu during her employment, as they could have changed or she could have wished the respondent to have used another bank account.

[22] Therefore, up to the point when Ms Grant contacted Mr Gilbert to say that payment had not been made on or before 20 November, the respondent was not in

breach of the agreement, as a precondition of payment had not been satisfied; namely, nomination of the bank account.

[23] However, at the point when Mr Gilbert received the email from Ms Grant chasing payment, he was given the chance to explain why payment had not been made. He merely stated that Ms Mahieu had not complied with the terms of the agreement. He did not specify in what way he regarded her as having failed to comply.

[24] I do not agree with Mr Gilbert when he asserts that he was under no obligation to point out to Ms Mahieu what the breach was. To have done so would not have been providing "assistance" to Ms Mahieu or Ms Grant, as he asserts, but would have been providing information. It was he who was asserting the applicant had breached the settlement agreement. The applicant was entitled to know sufficient particulars of that allegation of breach to enable her to remedy it.

[25] I also do not agree with Mr Gilbert when he asserts that there was only one obligation stated in the record of settlement that Ms Mahieu had to comply with; namely to nominate her bank account.

[26] The record of settlement contains three obligations upon Ms Mahieu. The first is contained in clause 1; that is, a duty to keep the terms of the settlement agreement confidential. The second obligation was, as asserted by Mr Gilbert, to nominate her bank account. The third is contained in clause 4 of the record of settlement, which is an obligation, when speaking of the respondent to third parties, to do so only in positive or neutral terms "to the intent " that she would not disparage the respondent. The obligations in clause 1 and 4 are expressed as mutual obligations. However, clearly, they were obligations which Ms Mahieu had to comply with.

[27] I therefore accept the submissions of Ms Grant that, when Mr Gilbert accused Ms Mahieu of breaching the settlement agreement without saying how, it was reasonable for her and Ms Grant to have been uncertain as to what he meant. He could have been accusing Ms Mahieu of having breached the obligation of confidentiality, or the obligation of non-disparagement.

This is especially so given his referring to Ms Mahieu as a liar.

[28] Whilst Mr Gilbert is robust in his assertions that a competent legal professional should easily have worked out what he meant, that is, frankly, unreasonable. The reality was that he was asking Ms Grant and Ms Mahieu to engage in a guessing game and to try to read his mind.

[29] Notwithstanding this failure to disclose the details of Ms Mahieu's "breach", the respondent was still not in breach of the settlement agreement by failing to pay the settlement sums until it had been provided with a nominated bank account. This was provided by way of a letter dated 17 January 2017 when Mr Gilbert's cheque dated

23 December 2016 was returned because Ms Mahieu's name was spelt incorrectly. Payment was not made for another 41 days, when the first tranche of the settlement moneys were paid. The second tranche was paid two days later.

[30] Mr Gilbert attributed the delay in making the payments to cash flow issues within the business. However, whilst Mr Gilbert did not adduce any evidence to support this, I do not accept that this is a likely explanation given that the respondent had been obliged to make the settlement payments in their entirety (albeit in two tranches) by 20 December 2016. Mr Gilbert says it was never the intention of the respondent to breach the agreement. Therefore, the whole settlement sum should have been available as at 20 December 2016, and continued to have been available by

17 January 2017, when the bank account details were finally given.

[31] Having not been able to make the payment until 17 January 2017, when was the respondent obliged to do so? I find that there can be implied into the settlement agreement a term that payment would be made within a reasonable period after the date that the nominated bank account details were supplied, if they were supplied after the payment dates set out in the agreement. Waiting 41 days is not a reasonable timeframe.

[32] Therefore, it is my conclusion that the respondent did breach the record of settlement by failing to make payment of the entire settlement sum within a reasonable time of the date when details of Ms Mahieu's nominated bank account were made available to Mr Gilbert.

Should a penalty be imposed upon the respondent for breaching the settlement agreement?

[33] Section 149(4) of the Act states as follows:

A person who breaches an agreed term of settlement to which subsection (3) applies is liable to a penalty imposed by the Authority.

[34] I am satisfied that s.149(3) of the Act applies to the record of settlement in question given the certification made by the mediator contained within its terms.

[35] Section 135 of the Act provides that every person who is liable to a penalty under the Act is liable, in the case of a company or other corporation, to a penalty not exceeding $20,000.

[36] The Employment court in *Borsboom v. Preet PVT Ltd & Anor*.1 identified the following objectives of penalties in employment law generally:

a) Punishment;

b) Deterrence, both specific and general;

c) Compensation of a victim of a breach;

d) Eliminating unfair competition in business.

[37] This fourth objective is arguably not relevant in the case of breaches of a settlement agreement. It is, however, clear that s.149(4) of the Act has as its purpose punishment for breaches of legally binding agreements, deterrence to prevent repetition of such breaches and possible compensation to the victim of the breach.

[38] The Full Employment Court in *Preet* cited from, and endorsed, the approach to penalties adopted by Judge Inglis in *Tan v Yang2* which identified additional factors. These are as follows:

(a) The seriousness of the breach;

(b) Whether the breach is one-off or repeated;

(c) The impact, if any, on the employee/prospective employee; (d) The vulnerability of the employee/prospective employee;

(e) The need for deterrence;

1 [2016] NZEmpC 143 at [50]

2 [2014] NZEmpC 65 at [32]

(f) Remorse shown by the party in breach; and

(g) The range of penalties imposed in other comparable cases.

[39] The Employment Court in *Preet* added the following four factors at para.[68]: (a) When assessing deterrence, to do so both in relation to the particular

person to be penalised and the wider community of employers;

(b) When considering the seriousness of the breach, the degree of culpability of the person in breach;

(c) The general desirability of consistency in decisions on penalty; and

(d) When assessing a penalty or penalties, to stand back and evaluate whether the anticipated outcome is one which is proportionate to the breach or breaches to which the penalty is imposed.

[40] In considering whether a penalty should be imposed, I take into account the following findings:

(a) Mr Gilbert was entitled to know which bank account Ms Mahieu nominated before making payment of the money;

(b) Whilst he pointed out to Ms Grant that Ms Mahieu was "in breach" of the settlement agreement, he did not identify what that purported breach was;

(c) Despite being asked to identify that breach, Mr Gilbert refused to do so;

(d) Mr Gilbert only identified what was preventing him from paying the settlement sums when he lodged the respondent's statement in reply;

(e) The respondent waited 41 days between being told the nominated bank account number and making the payment;

(f) The respondent made the payments in two tranches, even though it should have had the funds available to make the payment in a single lump sum by the time the bank account number was provided;

(g) Although the respondent proffered a cheque to SB Law in late December 2016, the name on the cheque was misspelt. I note, in passing, that Mr Gilbert misspelt Ms Mahieu's name on several occasions in various documents. For a man who is obviously intelligent and articulate, and very precise in his use of language, it is surprising that the only area of continued sloppiness was in the spelling of his former employee's name. One could therefore infer that this was deliberate.

[41] Non-payment of settlement sums pursuant to a record of settlement is a serious matter as, in the vast majority of cases, payment of the settlement sum is at the very heart of the agreement. An employee typically agrees to leave the employment of an employer or agrees to withdraw proceedings or a threat of proceedings in return for the payment of a sum of money.

[42] The initial failure to pay the settlement monies on the date set out in the record of settlement was due to Mr Gilbert not knowing Ms Mahieu's nominated bank account. That is excusable. The respondent's culpability arises, however, when Mr Gilbert flatly refused to advise Ms Grant what was preventing the respondent from making the payment, instead replying in vague terms to Ms Grant's inquiry.

[43] This culpability was compounded, in my view, when Mr Gilbert waited

41 days before making payment of the settlement money (and 43 days before making payment in its entirety) despite having been given the nominated bank account details, and despite, one may infer, having the moneys set aside for payment in any event, given Mr Gilbert's assertion that he was never intending to breach the contract.

[44] I believe that Mr Gilbert caused the respondent company to delay payment for no legitimate reason. Therefore, I believe that it is appropriate to impose a penalty on the respondent company.

[45] When deciding the amount of that penalty, I am obliged to follow the four step process set out in *Preet*. The first step is to identify the nature and number of the breaches, and the maximum penalty available in respect of each penalisable breach. There was only one breach of the agreement; namely to make the payment within a reasonable period of the details of the nominated bank account being made available.

[46] The maximum penalty available to be imposed is therefore $20,000, as this is the sum available to be imposed on a company.

[47] In assessing the severity of the breach under step 2, I believe that the breach is at the lower end of severe, given that

payment was eventually made, albeit late. It was also clear during the investigation meeting that Mr Gilbert had tried to enter into a negotiation with Ms Mahieu via Ms Grant as to the mechanism of payment. It is possible that this negotiation would have been partly responsible for the delay in payment. I would assess that the starting point, taking into account severity, would be

25%. This gives a sum of $5,000.

[48] The next stage of step 2 is to assess whether there are any mitigating or ameliorating factors that could be used to reduce the penalty. I cannot find any mitigating or ameliorating factors other than that already stated, relating to the negotiation, which I have already taken into account. Mr Gilbert did eventually apologise for the many insulting references to Ms Mahieu that he made in his communications with Ms Grant, repeated in the statement in reply, but that is not relevant to the breach that I have found.

[49] Step 3 relates to the means and ability to pay of the person who is to pay the penalty. I have heard no evidence on this. However, there is no reason to believe that the respondent is unable to pay a modest penalty and so I will not reduce the penalty in relation to step 3.

[50] The final step in the process is to apply what is called the *proportionality* test. This requires the Authority to step back and consider whether the provisional penalty reached after the first three steps have been applied ($5,000) is proportionate to the seriousness of the breach, and harm occasioned by it. This step is to ensure that the imposition of a penalty and the amount of it is just in all the circumstances.

[51] When I consider the nature and extent of the breach, it is my view that $5,000 is excessive and, accordingly, I reduce it to $3,000.

[52] Section 136 of the Act states that, subject to any order made under subsection (2), every penalty recovered in any penalty action must be paid into the Authority, and not to the "plaintiff" and must be then paid by the Authority into a

Crown Bank Account. Subsection (2), however, provides that the Authority may order that the whole or any part of any penalty recovered must be paid to any person.

[53] I did not hear any evidence from Ms Mahieu as to the effect on her of the failure to make the payments of the settlement moneys within a reasonable time of the nominated bank account being provided. It was Ms Mahieu's choice not to give evidence before me.

[54] However, when I take into account the steps that Ms Mahieu had to take, via her legal advisers, to obtain eventual payment, I believe that it would be just to award a portion of the penalty to her in recognition of the probable frustration she was feeling at the delay in obtaining payment of the settlement sums after the account details had been made available.

[55] Therefore, I direct that $1,000 of the $3,000 penalty be paid to Ms Mahieu.

Should costs be awarded in favour of Ms Mahieu against the respondent?

[56] Clause 15 of Schedule 2 of the Act gives the Authority the power to order any party to a matter to pay to any other party such costs and expenses as the Authority thinks reasonable.

[57] Whilst the Authority has the discretion to award costs, it must do so in a principled manner. The principles are well known and are set out in the Employment Court decision of *PBO Ltd v. Da Cruz3*. These principles include the following:

a) The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority.

b) Equity and good conscience are to be considered on a case by case basis.

c) Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party's conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.

d) It is open to the Authority to consider whether all or any of the parties' costs were unnecessary or unreasonable.

3 [2005] NZEmpC 144; [2005] 1 ERNZ 808

e) That costs generally follow the event.

f) That without prejudice offers can be taken into account. g) That awards will be modest.

h) That frequently costs are judged against a notional daily rate.

i) The nature of the case can also influence costs and this has resulted in the

Authority ordering that costs lie where they fall in certain circumstances.

[58] The first consideration is whether costs should be imposed upon the respondent. It was only after the statement of problem was lodged with the Authority by Ms Grant on behalf of Ms Mahieu that Mr Gilbert disclosed why he had been unable to make payment. I am satisfied on a balance of probabilities that, had Mr Gilbert advised Ms Grant what the problem was on 29 November 2016, instead of sending a petulant and insulting email, it would have been unnecessary for Ms Mahieu to have lodged the statement of problem, and for any of the costs that Ms Mahieu now seeks to have been incurred. Therefore, I am satisfied that it is appropriate to award costs against the respondent.

[59] When I consider the costs that are being sought, I am not convinced that the total sum sought is reasonable. Ms Grant provided a copy of the invoice, in the sum of $4,400 plus GST (making a total of $5,085). She included with her invoice an unbilled work in progress report which set out the work carried out by her between

6 December 2016 and 23 March 2017. The following are the elements which I do not accept are reasonable:

• meeting with DB re LM case and response, called LM – 7 units - $175

• prep for teleconference LM – 10 units - $250

• preparation for hearing and submission for hearing – 80 units - $2,000 [60] I believe that DB refers to Mr David Beck, the principal of SB Law who was

supervising Ms Grant. Whilst Mr Beck has not recorded time in the matter, it is not clear why Ms Grant needed to meet with Mr Beck for such a length of time, although it is not clear how much of this time relates to the meeting with Mr Beck and how much to the call to Ms Mahieu. In any event, I reduce this by 2 units ($50)

[61] I do not believe that it would have been necessary to have spent an hour preparing for the telephone conference with the Authority which took place on

24 February. I reduce this time by 5 units ($125).

[62] Finally, I do not accept that 8 hours was necessary for the preparation of the submissions that were produced by Ms Grant. I reduce this by half ($1,000).

[63] Therefore, I reduce the sum of $4,450 by $1,175 to produce a revised sum of

$3,275, plus GST (giving a total of $3,766.25).

Costs of the investigation meeting

[64] I now turn to the matter of the costs incurred by Ms Mahieu in her professional representative attending the Authority's investigation meeting on 27 March 2017.

[65] The usual approach in fixing costs is to adopt a daily tariff approach. The current standard daily tariff for a one day investigation meeting in the Authority is

$4,500. However, given that I have already awarded costs in relation to Ms Grant's preparation for the investigation hearing, it would not be just to adopt a daily tariff approach in respect of her attendance at the meeting.

[66] The investigation meeting on 27 March lasted 1½ hours. The respondent is therefore to pay to Ms Mahieu the sum of $375 plus GST as a contribution towards the costs incurred by her in being represented at the investigation meeting. This sum is Ms Grant's hourly charge out rate of $250 multiplied by 1.5.

[67] The respondent is also to pay to Ms Mahieu the sum of $71.56, being the lodgement fee that she had to incur in lodging the statement of problem.

Did Ms Mahieu breach the settlement agreement?

[68] I am satisfied that Ms Mahieu did not breach the settlement agreement. What occurred is that she did not advise Mr Gilbert what her nominated bank account was. No time limit was given for her to do so in the settlement agreement. Furthermore, until she did do so, the respondent was not obliged to make any payment. The nomination of the bank account details was not a term that was capable of breach; it was a condition precedent to payment of the settlement sums.

[69] If I am wrong in this, then I am satisfied that the "breach" by Ms Mahieu in not nominating a bank account until 17 January 2017 was of such a minor nature, and was clearly inadvertent, that it would be wholly inappropriate to impose a penalty upon her for such a matter.

[70] Therefore, I decline to impose any penalty on Ms Mahieu.

Orders

[71] I order the respondent to pay a penalty in the sum of $3,000, such payment to be made no later than 21 calendar days from the date of this determination, in the following proportions:

(a) The sum of $2,000 to be paid into the Authority, which will then be paid by the Authority into a Crown Bank Account; and

(b) The sum of $1,000 to be paid to Ms Mahieu by direct credit into her bank account, the number of which was advised to Mr Gilbert by way of Ms Grant's letter to him dated 17 January 2017.

[72] In addition, by no later than 21 calendar days from the date of this determination, the respondent is to pay the following sums to Ms Mahieu, by way of a contribution towards her legal costs:

1. $3,275, plus GST in the sum of $491.25

2. $375, plus GST in the sum of $56.25; and

3. $71.56.

[73] These sums are to be paid to Ms Mahieu by direct credit into her bank account, the number of which was advised to Mr Gilbert by way of Ms Grant's letter to him dated 17 January 2017.

David Appleton

Member of the Employment Relations Authority
