

Jurisdiction

[3] The settlement agreement does not conform to the usual form seen in the Authority; the agreement was not signed by a mediator under section 149 or recorded by consent order of the Authority. Does the Authority have jurisdiction to enforce such a settlement agreement by way of compliance order? If not, is there any other statutory mechanism available to enforce such a settlement agreement?

[4] Section 137 of the Act provides the Authority may order compliance with *any provision of any employment agreement*. However, a settlement agreement is not a provision of an employment agreement, rather, it relates to an employment agreement: *Kerr v Associated Aviation (Wellington)* [2005] ERNZ 632. There is no jurisdiction to make a compliance order in relation to these parties' settlement agreement.

[5] Section 161(1)(r) Employment Relations Act 2000 confers jurisdiction on the Authority to consider the question of whether a settlement agreement has been breached and, if appropriate, award remedies for breach of contract: A settlement agreement with its origins in an employment agreement is sufficient to give the Authority jurisdiction because it relates to an employment relationship (section 161(1)(r)).

[6] Section 162 of 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 Contractual Remedies Act 1979 (section 162(c)).

Binding

[7] The parties do not dispute that the settlement agreement they entered is binding.

[8] I have perused the email chain which culminated in the settlement and questioned the parties to the settlement. I am satisfied that they are clear as to the terms of their settlement and that it is binding on them.

Breach

[9] George Hawke is the President of the Club. He said between 10am and 10.30am on 11 September, the day after the parties had reached settlement, the Club secretary told him an associate of the Club had told her Luke Stevens, an employee of the Club bar, had told him Ms McIntyre's claim against the Club had settled and there were, in Mr Hawkes' words, *two figures floating about*, one of \$20,000 and another of \$12,000.

[10] Mr Hawke immediately contacted Mr Quarrie who contacted Mr Ryan advising Ms McIntyre's actions had repudiated the settlement, advice which he confirmed in writing later that day:

I confirm my advice to you this morning that my client has been made aware that Ms McIntyre has disclosed details of the proposed settlement in contravention of the confidentiality requirement. The details were disclosed to at least one person in Whangaroa by Ms McIntyre.

Confidentiality was, of course, a fundamental term of the arrangement.

The breach of confidentiality has, from my client's perspective, totally repudiated any agreement entered into by it as to settlement. The publicising by Ms McIntyre of the terms of the proposed settlement has made such a settlement untenable to my client.

My instructions are that if your client wishes to pursue her claim that she will have to do so through the Authority.

[11] Ms McIntyre strenuously denies breaching the confidentiality term of the agreement. She received a txt message from Mr Stevens on the evening of 10 September congratulating her on her settlement and wondered who had told him. She was able to provide her reply to his message to the Authority, but not his message which had been deleted. Ms McIntyre's reply txt provided:

Omg i wonder who from the club is telling everyone cause I only found out tonight. It is awesome a. The best part is they offered to give me a public apology.

[12] Mr Stevens, in his evidence to the Authority, said Ms McIntyre's father had told him, that evening, Ms McIntyre had settled her case with the Club and she could have *won* up to \$20,000. He said he had had this conversation with Mr McIntyre about 10 minutes prior to sending the txt message to Ms McIntyre and that conversation was held in the bar of the hotel in which he was employed.

[13] Ms McIntyre said she told her sister she had settled her personal grievance with the Club the day the settlement was reached, but not the terms of the settlement. Ms McIntyre says that as her sister lives with their father she would have told him her personal grievance had settled. Ms McIntyre says her father denies telling Mr Stevens about the settlement or any related sum. Despite this assurance from her father Ms McIntyre believes Mr Stevens - that it was her father who told him she had settled her personal grievance and that the settlement included a sum of money. She says her father must have speculated as to the fact a sum formed part of the settlement and what that sum was because she did not tell her sister money was involved and her sister was the only person she had advised of the fact of settlement.

[14] Mr Hawke concluded Ms McIntyre must have told somebody about the settlement sum. He reached this conclusion because he was the only person at the Club who knew about it and he had told no one.

[15] For the sake of clarity, notification of the fact of settlement did not breach the parties' confidentiality clause; the settlement sum was the only term of the agreement which attracted confidentiality.

[16] Did Ms McIntyre breach the confidentiality clause of the agreement on 10 September?

[17] Mr Stevens says Ms McIntyre's father told him about a settlement sum of up to \$20,000. Ms McIntyre says she did not discuss the fact of settlement or the settlement sum with her father.

[18] There is no direct evidence that Ms McIntyre breached the confidentiality provision of the parties' settlement agreement. Her father's disclosure to Mr Stevens is not a breach of the agreement; he was not a party to the settlement agreement. That his disclosure was in fact speculative is plausible given the general knowledge in the community that settlements of personal grievances may include sums of money, the inaccurate sum advised to Mr Stevens and the lack of direct evidence that this information came from Ms McIntyre. I find, on balance, that Ms McIntyre did not breach the settlement agreement entered with the Club on 10 September 2008.

Conclusion

[19] I have found the Club has breached the settlement agreement entered with Ms McIntyre. No reasonable basis existed upon which the Club could reasonably believe it was released of its obligations to Ms McIntyre under the terms of the settlement agreement.

[20] The Club breached terms of settlement freely entered and Ms McIntyre has suffered damage consequent to that breach; the Club's erroneous belief that it was released from its obligations under the terms of settlement has deprived Ms McIntyre of the compensation agreed to settle her personal grievance.

[21] The following orders are made pursuant to section 162(c) of the Act:

Whangaroa Big Gamefish Club is required to pay Anthea McIntyre damages quantified as the settlement sums and any other compensatory benefits as provided in the parties' settlement agreement entered 10 September 2008.

Costs

[22] Costs are reserved. The parties are invited to attempt to resolve this issue themselves. If this does not prove possible then application should be made to the Authority within 14 days of the date of this determination to set a timetable for the filing of costs memoranda.

Marija Urlich

Member of the Employment Relations Authority