

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI A TARA ROHE**

[2025] NZERA 293
3337420

BETWEEN	LEE POWNALL Applicant
AND	NATIONAL ADVOCACY TRUST Respondent

Member of Authority:	Davinnia Tan
Representatives:	Applicant in person Matthew Hutcheson, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions received:	3 April 2025 from the Applicant 1 April 2025 from the Respondent
Determination:	26 May 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Lee Pownall was employed by the National Advocacy Trust (NAT) in May 2022 as its Chief Executive Officer.

[2] The parties entered into a Record of Settlement (RoS) on 15 January 2024 following an employment dispute. The RoS was certified on 15 January 2024.

[3] The RoS required NAT to provide Mr Pownall with a Certificate of Service (CoS) “confirming his tenure, role and key duties within seven days of the parties signing the agreement.”

[4] On 21 October 2024, Mr Pownall alerted NAT about its failure to provide the CoS. Accordingly, NAT provided the CoS on 29 October 2024 and apologised for the delay.

[5] Mr Pownall requested a subsequent CoS as he believed the one NAT provided was inadequate. In an email to NAT on 29 October 2024, Mr Pownall stated:

...the failure to provide the certificate of service within the agreed seven-day period constitutes a breach of our settlement agreement. This breach has had a significant impact on my career, obstructing my ability to secure and maintain new employment. Additionally, the photocopy of the certificate provided is inadequate and reflects bad faith. Beyond the poor quality, the certificate also fails to accurately reflect the full scope of my role and the duties I performed to a high standard. I request that the Trust issue a properly formatted certificate that thoroughly details my duties, responsibilities, achievements, and contributions during my tenure.

I also wish to note that I have evidence of a denied reference request by a current or former board member, which further obstructed my professional opportunities. This denial reflects bad faith and is inconsistent with the spirit of the settlement agreement.

[...]

[6] Following several email exchanges on 30 October 2024, between the parties as to what Mr Pownall believed the CoS should state and a statement by NAT's lawyer that NAT was not under an obligation to provide Mr Pownall with a reference, an amended CoS was provided to Mr Pownall on 4 November 2024.

[7] Mr Pownall lodged a Statement of Problem (SoP) with the Authority on 9 January 2025 for a breach of settlement and has claimed that he is owed \$35,000.00 in compensation under section 123 of the Employment Relations Act 2000 (the Act). In his SoP, he also raised issues about NAT's handling of the matters leading up to the RoS.

Pre-investigation meeting Case Management Conference

[8] NAT accepts that it failed to provide Mr Pownall a CoS within seven days as required by the RoS. NAT's acceptance of the breach was acknowledged during the case management conference (CMC) the Authority convened on 18 February 2025.

[9] During the CMC, section 149 of the Act was brought to parties' attention, noting that the claimed remedies in Mr Pownall's SoP were not applicable to the issue raised.

[10] Pursuant to section 149 of the Act, a person who breaches an agreed term of settlement is liable to a penalty imposed by the Authority.

Other matters raised by Mr Pownall

[11] At the CMC, Mr Pownall asserted that NAT had acted in bad faith even though the CoS was eventually provided to him, albeit late. He also raised several other issues. During the CMC, I noted that the Authority could only look at the issue of a breach of settlement if NAT had failed to comply with the terms of the settlement, but could not consider issues that would otherwise be a re-litigation of the original dispute or post-dated the employment relationship.

[12] However, Mr Pownall expressed the view that he was entitled to further claims and remedies being investigated by the Authority. As such, I invited him to put his submissions in writing.

[13] On 18 February 2025, Mr Pownall wrote to the Authority asserting that the Authority's investigation should not be limited to a breach of settlement claim and reiterated the other issues he raised; namely, that:

- (a) He considered NAT engaged in bad faith and in retaliation following the protected disclosure Mr Pownall made under the Whistleblower Protection Act which resulted in a disciplinary meeting;
- (b) That NAT breached the Privacy Act;
- (c) He suffered reputation harm and employment impact;
- (d) He also suffered emotional distress and psychological harm.

The Authority's investigation

[14] For the Authority's investigation the matter was heard on the papers.

[15] All material from the parties was fully considered. However as permitted by s 174E the Act, this determination has not recorded all evidence and submissions received.

The issues

[16] The issues requiring investigation and determination were:

- (a) Whether there has been a breach of a settlement agreement entered into between Mr Pownall and the National Advocacy Trust on the basis that a Certificate of Service was not provided within the stipulated terms and conditions of the settlement agreement; and
- (b) Whether penalties should be awarded under s 149(4) of the Employment Relations Act 2000 (the Act), and if so, how much and to whom (the Applicant or the Crown).
- (c) Should either party contribute to the costs of representation of the other party.

Mr Pownall's submissions

[17] On 3 April 2025, Mr Pownall submitted:¹

Introduction

This submission reaffirms that all matters raised in my original **Form 1 Application** fall within the jurisdiction of the **Employment Relations Act 2000 (ERA)** and must be considered in full by the Authority. I have submitted additional supporting documents and legal references, as suggested by the Member, to demonstrate that each of these breaches constitutes a legitimate claim under the Act.

The Authority has previously indicated that claims within the original problem may be considered if appropriately aligned with the ERA. I have now clearly identified and substantiated these claims with direct legal references and supporting documentation. I request the Authority apply discretion in reviewing how these claims are expressed, especially given that I am a self-represented party. ERA promotes support for self-representation and I ask that principle be respected in this case.

I also wish to confirm that this matter should be fully addressed by the Authority so that I am not forced to escalate to the Employment Court. The continued burden of this case and the personal and professional harm I have experienced underscore the urgency of comprehensive resolution.

Furthermore, I respectfully request that the Authority consider whether a **further Directions Conference** is warranted to ensure the appropriate scope of issues is confirmed and my claims are heard fully and fairly.

Clarification and Legal Context

The following issues were clearly raised in my original Form 1 and now include direct reference to the relevant sections of the Employment Relations Act 2000:

¹ These submissions have been set out as provided by Mr Pownall without amendment and as such where there are incorrect references to relevant provisions of legislation, these have not been amended.

- (1) **Breach of Settlement Agreement** – failure to provide a certificate of service in a timely and complete manner (**Section 134**).²
- (2) **Breach of Good Faith and Misrepresentation** – including delay, substandard certificate, and lack of communication (**Section 4** and **Section 50I**).
- (3) **Retaliation for Whistleblower Disclosure** – following my protected disclosure to the Health and Disability Commissioner (**Section 110B**). This includes adverse conduct and lesser treatment as a direct result of raising serious governance concerns.
- (4) **Personal Grievance – Unjustified Disadvantage and Constructive Dismissal** – while NAT asserts I did not raise a formal personal grievance, I did raise clear concerns to the Board and the HDC including [sic] bullying of myself as well as other wrongdoings that were clearly evidenced. This amounts to a grievance as defined under **Section 114**, and it was never properly which led directly to worsening treatment and the eventual breakdown of the employment relationship. Furthermore, following my HDC complaint, NAT began to fabricate performance concerns, using the term “serious misconduct” despite no record or prior allegation of misconduct during my employment. These are retaliatory in nature and support a claim of constructive dismissal.
- (5) **Disparagement and Breach of Confidentiality** – post-settlement disclosures to third parties and derogatory internal communications that damaged my professional standing (**Section 4**). These include emails and actions that suggest my employment ended due to performance when no such evidence exists, and contradict NAT’s own annual report and settlement terms.
 - a. Each of these breaches has caused ongoing harm to my reputation, career, and mental health.

Request for Recognition and Compensation

- I request that the Authority consider each breach in full, as now linked to the ERA.
- I request **maximum compensation** for loss of earnings, reputational damage, emotional distress, and retaliatory conduct.
- I seek **maximum penalties** to be imposed against the respondent for repeated and deliberate breaches of employment law.

I have attached supporting documents previously and may provide further material if required.

Final Appeal to the Authority

I am a former Chief Executive with around 10 years of Chief Executive experience. I gave my best to this sector and this employer, and was removed forcefully, under pressure and stress after raising protected disclosures. Since then, I have been subject to retaliation, reputational harm, and unlawful conduct by the same individuals who

were directed to step down from governance, some of whom still remain in leadership roles in this organisation.

The Authority has a duty to support good faith employment practice and protect whistleblowers. I respectfully request that all of my claims be addressed without requiring escalation to the Employment Court.

Final Requests

...That all breaches raised in my Form 1 application be fully considered by the Authority.

That my linking of each claim to the ERA be accepted in good faith.

That compensation and penalties be awarded based on the scale and ongoing nature of harm.

That the Authority acknowledges my good faith, cooperation, and evidence-based approach

Analysis

[18] Except for NAT's failure to provide Mr Pownall the CoS within seven days of the RoS being signed, the issues raised by Mr Pownall are not relevant for reasons below. There is no legal basis for Mr Pownall to seek to re-litigate matters nor are there any other grounds for Authority proceedings, other than for a breach of settlement.

[19] Mr Pownall's claims may be described as follows:

- (a) Claims relating to events that occurred during his employment – number (3) and (4) of paragraph 17;
- (b) Claims relating to a breach of the RoS – number (1) and (2) of paragraph 17;
- (c) Claims relating to events occurring post-employment – number (5) of paragraph 17;
- (d) Claims under the Privacy Act 2020.

[20] Mr Pownall is not able to bring claims relating to events that occurred during his employment as these have been resolved by way of the RoS.

[21] The Act is clear, "except for enforcement purposes, no party may seek to bring those terms before the Authority or the court, whether by action, appeal, application for review, or otherwise."³

³ Section 149(3)(b) of the Employment Relations Act 2000.

[22] In other words, Mr Pownall cannot seek to revisit or challenge matters relating to the RoS, except for enforcement purposes. His claims in paragraph 17, numbers (3) and (4) cannot be considered.

[23] Mr Pownall can bring a claim of breach of the RoS. Claims in paragraph 17 numbers (1) and (2) will be considered together with his request for remedies. In saying this, s 137(1)(a)(iii) and s149(4) of the Act set out the remedies available for a breach of settlement. Section 137 provides that where a term of settlement has not been complied with, this may be enforced by compliance order. Section 149(4) provides for a penalty. Therefore Mr Pownall's claims for remedies that fall outside the scope of these provisions, including those in paragraph 17 above, cannot be considered.

[24] The CoS has been provided and therefore the breach is rectified, subject to NAT's liability as to penalties (which is discussed below).

[25] The other and majority of issues Mr Pownall raised either relate to the original employment dispute or are allegations of bad faith post-dating the employment relationship. Allegations that his rights under the Privacy Act 2020 were breached, are not within the Authority's scope of jurisdiction. As discussed at the CMC, these are issues for the Office of the Privacy Commissioner.

[26] Further, as discussed in the CMC, the only remedy for a breach of settlement is a penalty, which I will now consider.

Penalty

[27] There are matters the Authority must have regard to when determining the appropriate quantum of penalty. These non-exhaustive matters are set out in section 133A of the Act.⁴

[28] NAT submitted that it did not intentionally fail to provide Mr Pownall with the CoS. Following settlement there was confusion as to who would be responsible within NAT for providing the CoS; and due to administrative changes, there was an oversight until Mr Pownall alerted NAT to the issue on 21 October 2024. The CoS was provided on 29 October 2024 and again on 4 November 2024 at Mr Pownall's request.

⁴ See section 133A of the Employment Relations Act 2000.

[29] Having provided the CoS to Mr Pownall on two occasions, I consider that breach rectified.

[30] I do not accept that the failure to provide the CoS within seven days caused any real harm to Mr Pownall. Mr Pownall claimed to have suffered harm and “employment impact”, but as noted by NAT and acknowledged by Mr Pownall, he found employment with the Hutt Valley Youth Health Trust shortly after his employment with NAT ended. Although Mr Pownall’s employment with the Hutt Valley Youth Health Trust was terminated in May/June 2024 (as noted by Mr Pownall in his email of 31 January 2025), this cannot be attributed to NAT’s failure to provide the CoS in any way.

[31] I find that the breach was also an isolated and inadvertent breach. NAT has not previously been ordered to pay penalties, and the breach was minor.

[32] Accordingly, I must award a quantum which is proportionate to the minor nature of the breach.

[33] In these circumstances, I accept that NAT’s breach was inadvertent and has been rectified.

[34] Having balanced the evidence against current trends in both the Court⁵ and the Authority⁶, I consider \$500.00 appropriate.

Orders

[35] The National Advocacy Trust is to pay, within 28 days of this determination, \$500.00 into the Crown’s bank account.

Costs

[36] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[37] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the party who believes they are entitled to costs may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum the other party will then have 14 days to

⁵ *Boorsboom v Preet PVT Limited* [2016] NZEmpC 143.

⁶ *Bhamblani v Walond Limited*[2021] NZERA 179; *Guthrie v Commissioner of Police* [2016] NZERA Christchurch110;

lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[38] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.⁷

Davinnia Tan
Member of the Employment Relations Authority

⁷ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1