

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2019] NZERA 710  
3079760

BETWEEN

ETHAN RAMRITU  
Applicant

AND

LADO AIR CON LIMITED  
Respondent

Member of Authority: Eleanor Robinson

Representatives: George Ryde, Advocate for the Applicant  
Alison Lado, Representing the Respondent

Investigation Meeting: On the papers

Submissions: 6 December 2019 from the Applicant  
12 December 2019 from the respondent

Determination: 16 December 2019

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, Mr Ethan Ramritu, claims that the Respondent, Lado Air Con Limited, failed to adhere to clause 2 of a mediated settlement agreement (the Record of Settlement).

[2] On 11 September 2019 the Record of Settlement was entered into under s. 149 of the Employment Relations Act 2000 (the Act). The Record of Settlement was signed by the Applicant and by Mr Alison Lado, Director, on behalf of Lado Air Con Limited. The Record of Settlement was also counter-signed by a Mediator employed by the Ministry of Business, Innovation and Employment (MBIE) on 11 September 2019.

[3] The issue which had been brought before the Authority by the Applicant is that the Respondent has not complied fully with clause 2 of the Record of Settlement, which states:

2. LADO AIR CON LIMITED shall, without admission of liability, pay Ethan Jon Rajeev Ramritu, the sum of \$5,000 in terms of the provisions of s 123(1)(c)

) (i) of the Employment Relations Act 2000 by way of instalments of at least \$500 on the 21<sup>st</sup> of each month starting on or before 21<sup>st</sup> September 2019 and ending at the latest on or before 21<sup>st</sup> June 2020. Should any payment not be made on the due date then the whole amount will become due at that date.

[4] The Record of 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.

#### **Note**

[5] The parties agreed to the Authority determining this issue based on the Statement of Problem and the Statement in Reply, and on submissions from the parties.

#### **Issues**

[6] The issue for determination is whether or not Lado Air Con Limited failed to comply with clause 2 of the Record of Settlement.

#### **Background**

[7] The payments set out in clause 2 of the Record of Settlement were to be paid to Mr Ramritu by instalments on the 21<sup>st</sup> day of each month.

[8] Mr Ramritu claims that he received the agreed payments for September and October on dates after the agreed due date of the 21<sup>st</sup> of each month i.e. on 23 September and 25 October 2019.

[9] Lado Air Con Limited claims that only one of three payments due to be paid to date has been made outside of the due date i.e. on 25 October 2019 and has submitted bank statements in support of this assertion.

[10] Mr Lado stated that Lado Air Con Limited had been unable to make the scheduled payment in October due to the delayed receipt of a payment by a contractor and Lado Air Con Limited being unable to borrow from the bank.

[11] Mr Lado said Lado Air Con Limited had made the payment in October 2019 within four days of its having fallen due.

[12] The bank statements submitted by Lado Air Con Limited confirm that payments were made on 21 September and 21 November 2019 to Mr Ramritu's bank account, and it is possible that the late receipt by Mr Ramritu was due to bank processing.

[13] However, even accepting that possibility and that financial circumstances made it difficult for Lado Air Con Limited to comply with the date of the scheduled payment in October 2019, and moreover that the breach of the terms of the Record of Settlement was not deliberate, nonetheless Lado Air Con Limited has not complied with clause 2 of the Record of Settlement.

### **Compliance Order**

[14] The Record of Settlement refers in clause 2 to specific dates when payment should be made. I find that this has not occurred in one instance..

[15] The Record of Settlement refers in clause 2 to the agreement of the parties that the remaining balance of the outstanding sums as set out in clause 2 becomes immediately due and payable in the event of a default in payment.

[16] As stated above, I accept that the non-compliance situation is attributable to the financial circumstances of Lado Air Con Limited rather than to deliberate intention on its part. However I determine that there has been a default in the agreed payment.

[17] From the evidence available to the Authority, I am satisfied that Lado Air Con Limited has failed to comply with clause 2 of the Record of Settlement.

[18] **In order to effect compliance with the Record of Settlement, I therefore order Lado Air Con Limited to pay Mr Ramritu, no later than 14 days from the date of this determination, the remaining balance of monies in the sum of \$3,500.00 pursuant to s 137(1)(iii) of the Act.**

### **Filing Fee**

[19] **Lado Air Con Limited is also ordered to pay Mr Ramritu the filing fee of \$71.56 within 14 days of the date of this Determination.**

**Costs**

[20] I note here that Mr Ramritu has not incurred legal costs in bringing this matter to the Authority and therefore he has no grounds to claim a contribution to any fair and reasonable costs.

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