

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2021] NZERA 137  
3106475

BETWEEN	SUMAN SHARMA Applicant
AND	GOLDEN FERN EXTREME LIMITED Respondent

Member of Authority:	Marija Urlich
Representatives:	Applicant, in person Peng Guan Goh, Respondent director
Investigation Meeting:	9 April 2021 by telephone
Determination:	9 April 2021

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Ms Sharma says Golden Fern Extreme Limited (Golden Fern) has breached obligations owed to her under a record of settlement entered by the parties and certified by a mediator on 24 April 2020.<sup>1</sup> She seeks an apology, a penalty and reimbursement of the filing fee incurred in lodging this application. Golden Fern says all the monies owed to Ms Sharma under the record of settlement have been paid, albeit outside the agreed timeframe, but that the delay was not significant and was due to extenuating circumstances for Golden Fern and its director Mr Goh.

**The Authority's Investigation**

[2] The investigation meeting was held today by telephone. Ms Sharma and Mr Goh gave evidence under affirmation. The Authority was assisted by an interpreter of the

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<sup>1</sup> Employment Relations Act 2000, s 149.

Mandarin language. As permitted by s 174E of the Employment Relations Act 2000 (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.

## **Issues**

[3] The issues requiring investigation and determination were:

- a. Has Golden Fern breached the record of settlement dated 21 April 2020 by failing to pay monies owed within the agreed timeframe?
- b. If Golden Fern has breached the record of settlement should a penalty be ordered and should the penalty sum or part thereof be awarded to Ms Sharma?
- c. Is Ms Sharma entitled to be reimbursed the filing fee of \$71.56 incurred in lodging her application?

## **Discussion**

### *(i) Breach of record of settlement*

[4] There is no dispute all money owed under the record of settlement has been paid. Ms Sharma's concern is that the money owed was received outside the agreed timeframe. Under the terms of the parties record of settlement Golden Fern was to pay Mr Sharma \$7,000 by 22 May 2020. This did not happen; on 25 May Golden Fern paid Ms Sharma \$4,000 and on 11 June she was paid the balance of \$3,000. Ms Sharma has established a breach of the record of settlement.

### *(ii) Penalty*

[5] A person who breaches an agreed record of settlement under s 149 is liable to a penalty.<sup>2</sup> Section 133A of the Act sets out the matters the Authority must take into account in determining an appropriate penalty for a breach. Having considered those matters, including the impact and circumstances of the breach, I decline to exercise my

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<sup>2</sup> Employment Relations Act 2000, s 149(4).

discretion and award a penalty against Golden Fern. Though it is accepted Ms Sharma has been put to the inconvenience and cost of applying to the Authority I am satisfied the breach was not intentional - there were extenuating circumstances which significantly impacted on the ability of both Golden Fern and Mr Goh as the responsible director to comply with the record of settlement. Golden Fern has not previously been found by the Authority or Court to have engaged in similar conduct.

*(iii) Apology*

[6] The Authority does not have jurisdiction to order an apology.

*(iv) Filing fee*

[7] Ms Sharma has established her claim and she is entitled to be reimbursed the filing fee of \$71.56. Golden Fern is to pay Ms Sharma this amount within 14 days of date of determination.

[8] At the investigation meeting Ms Sharma sought an award of costs to reimburse her time off work to attend. Ms Sharma has not incurred costs of representation for which a contribution can be awarded. This part of her claim cannot be met.

**Outcome**

[9] Golden Fern Extreme Limited is to pay Ms Sharma \$71.56 within 14 days of date of determination.

Marija Urlich  
Member of the Employment Relations Authority