

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 336
3028991

BETWEEN AMIT SHARMA
Applicant

AND XTREME NUTRITION &
TRAINING LIMITED
Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in person
Moe Elmoussawi for Respondent

Investigation Meeting: 30 October 2018

Determination: 31 October 2018

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mr Sharma worked for Xtreme Nutrition & Training Limited until the relationship ended in March 2014. He says he was not paid all of the wages and holiday pay payable to him during his employment and has applied to the Authority for orders requiring payment to be made.

[2] On 19 May 2016 the parties entered into a final and binding record of settlement signed by a mediator employed by the Ministry of Business, Innovation and Employment.

[3] For the reasons that follow I have found the record of settlement acts as a barrier to Mr Sharma seeking arrears of wages.

[4] As permitted by s 174E of 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 as a result. It has not recorded all evidence and submissions received.

[5] Mr Elmoussawi is also known as Mr Moses. To avoid any confusion I have referred to Mr Elmoussawi throughout this determination as Mr Moses.

Record of Settlement

[6] On 19 May 2016 the parties met in mediation and settled employment relationship and other problems between them. The record of settlement records the terms of the agreement including that the agreement is in full and final settlement of all matters between the parties arising out of their employment relationship. The record of settlement acknowledges that neither party has had to forego minimum entitlements including payments under the Holidays Act when reaching the agreement.

[7] At the investigation meeting Mr Sharma confirmed that one of the terms in the record of settlement requiring a payment of \$100,000 from Mr Moses took into account Mr Sharma's claims relating to arrears of wages.

[8] In a determination dated 17 January 2017 I held that some terms included in the record of settlement were not enforceable against Xtreme Nutrition but related to obligations on third parties and who were not parties to the record of settlement.¹ I concluded that the matters resolved in mediation included problems arising from the employment relationship and problems arising out of separate commercial relationships.

[9] One of the unenforceable terms related to the payment of \$100,000 from Mr Moses to Mr Sharma which would resolve Mr Sharma's claim for unpaid wages among other things. Mr Moses was the representative of Xtreme Nutrition at the mediation and signed the record of settlement on its behalf.

[10] Mr Moses has provided evidence that he performed this obligation under the record of settlement despite not being named as a party to the agreement. Mr Sharma disputes the evidence provided by Mr Moses regarding the payments to him of the \$100,000.

¹ *Sharma v Xtreme Nutrition & Training Ltd* [2017] NZERA Auckland 19.

[11] I find it is more likely than not that the payment of the \$100,000 was consideration for the resolution of both the commercial problems between the parties as well as the employment relationship problems including Mr Sharma's claim for unpaid wages. On balance I find that when the parties entered into the record of settlement they were aware of Mr Sharma's claims regarding arrears of wages and entered into a resolution of all the matters relating to the employment relationship including those claims.

[12] The record of settlement entered into on 19 May 2016 being full and final is a barrier to Mr Sharma now claiming arrears of wages as that issue was resolved by the record of settlement.

[13] In the event that I am wrong about the finality of the record of settlement I have considered Mr Sharma's application for arrears of wages. Mr Sharma claims \$81,000 in arrears. While the documents provided by both Mr Sharma and Xtreme Nutrition raise doubts about the amount and regularity of wages paid to Mr Sharma I am not satisfied Mr Sharma has established his claim that he is owed \$81,000 in arrears of wages.

Costs

[14] Xtreme Nutrition and Training Limited was not represented during the Authority's investigation process and therefore no costs will be awarded.

Vicki Campbell
Member of the Employment Relations Authority