

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 69/09
5143925

BETWEEN

MICHAEL SPRAGUE
Applicant

AND

PRP AUCKLAND LIMITED
Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in Person
Alan Copeman for Respondent

Investigation Meeting: 4 March 2009

Determination: 4 March 2009

DETERMINATION OF THE AUTHORITY

[1] At the commencement of the investigation meeting it was agreed to substitute PRP Auckland Limited (“PRP”) for the named respondents.

[2] Mr Sprague claims PRP has failed to honour a settlement agreement entered into by the parties on 26 August 2008. Mr Sprague seeks compliance with the terms of the agreement.

[3] Both Mr Sprague and Mr Anthony Kidd, a director of PRP signed a Record of Settlement and requested a Mediator from the Department of Labour to sign the record of the terms of settlement thereby making them enforceable under section 149 of the Employment Relations Act. Due to difficulties in making contact with Mr Kidd, the mediator was not in a position to sign off the terms of settlement pursuant to the Act.

[4] The settlement agreement arose after Mr Sprague and Mr Kidd resolved an employment relationship problem relating to outstanding bonus payments due under the employment agreement between the parties. Mr Sprague and Mr Kidd agreed Mr

Sprague was owed \$21,288.69. The parties agreed to a payment of \$17,000 in consideration for a settlement in full satisfaction of the outstanding bonus payments.

[5] It was agreed that the sum of \$17,000 was to be paid by way of an agreed schedule which required three payments of \$3,000 to be made in August, September and October and two payments of \$4,000 to be made in November and December.

[6] Clause 6 of the settlement agreement provides for the settlement figure of \$17,000 to revert to the full outstanding amount of \$21,288.69 in the event that PRP fails to honour the agreement.

[7] I am satisfied that while this agreement was not completed pursuant to section 149 of the Act, the Authority has jurisdiction to order compliance pursuant to section 161(1)(r) as the settlement had its origins in the employment relationship. (*Kerr v Associated Aviation (Wellington) Ltd* [2005] 1 ERNZ 632)

[8] I am also satisfied the contractual obligations were not dependent on the Mediator from the Department of Labour signing the agreement. This conclusion is supported by the fact that Mr Sprague received the first two payments of \$3,000 from PRP in the absence of the Mediator's signature.

[9] PRP Auckland Limited is directed to pay to Mr Sprague the sum of \$15,288.69 being the amount PRP has agreed to pay Mr Sprague pursuant to the settlement agreement between them. PRP Auckland Limited is to make the payment immediately.

Costs

[10] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, Mr Sprague may file and serve a memorandum as to costs within 28 days of the date of this determination. I will not consider any application outside that timeframe.

Vicki Campbell
Member of Employment Relations Authority

