

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 405
3164941

BETWEEN ANNALISE SUNDE
Applicant

AND NERALCM HOLDING LIMITED
Respondent

Member of Authority: Nicola Craig

Representatives: The applicant in person
Jay Harris for the respondent

Investigation Meeting: On the papers

Submissions [and further At the case management conference on 17 June 2022 and
information] Received: 27 June 2022 from the applicant
15 June 2022 from the respondent

Date of Determination: 20 August 2022

DETERMINATION OF THE AUTHORITY

A. Neralcm Limited breached a settlement agreement with Annalise Sunde and is ordered within 21 days of the date of this determination:

- a) To comply with the settlement agreement by paying Ms Sunde \$5,000 without deduction and \$1,725.00 (incl GST) as a contribution to her legal costs; and**
- b) To pay Ms Sunde \$71.56 for the Authority's filing fee.**

B. Jay McLaren Harris is joined as a party to this proceeding.

What is the Employment Relationship Problem?

[1] Annalise Sunde entered into agreed terms of settlement with her former employer Neralcm Limited (Neralcm or the company). The agreement was signed by a mediator from the Ministry of Business, Innovation and Employment on 10 November 2021.

[2] The agreement provided for the payment by Neralcm of several sums. Ms Sunde now seeks a compliance order against the company as she has received no payments. She also seeks to have Neralcm's director Jay McLaren Harris joined as a party to this proceeding so she is able to seek a compliance order against him.

How did the Authority investigate?

[3] The claim was originally lodged with Neralcm Limited as the only respondent party. Mr Harris confirmed to the Authority that his email address was the correct one for the statement of problem to be served on. Despite that confirmation, no statement in reply was lodged.

[4] The Authority contacted the parties to inform them that a case management conference would be held by telephone. Mr Harris emailed the Authority advising that he was overseas and not able to attend a Zoom call. He also provided additional information in response to Ms Sunde's claim. The Authority advised Mr Harris that he was able to participate in the conference by telephone.

[5] The conference was held on 17 June 2022. Attempts to contact Mr Harris were unsuccessful. As had been advised previously, the conference continued with only Ms Sunde. A direction was made that any further material and documents from the parties were to be filed by 28 June 2022.

[6] The Authority proposed that this matter be investigated on the papers and no objection was received. The Authority's Directions were sent to Ms Sunde and to Mr Harris.

[7] I am satisfied that Neralcm was aware of the claim against it and did provide a response to that claim by way of Mr Harris's email of 15 June 2022.

[8] Subsequently Ms Sunde sought to have Mr Harris joined as a party. The Authority gave him until 14 July 2022 to provide any comment regarding whether that should occur. The

Authority's email was sent to the email address Mr Harris has used to contact the Authority. No reply was received.

[9] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded everything received from the parties but has stated findings and conclusions and specified orders made as a result.

Was there a breach of the settlement agreement?

[10] The agreement required payment as follows under clause 5:

Neralcm will pay Annalise on a without prejudice admission of liability basis, the sum of \$5,000.00 (without deduction) under section 123(1)(c)(i) of the Employment Relations Act 2000 under the following payment terms:

- i. \$1,500.00 payable by the end of November 2021
- ii. \$1,500.00 payable by the end of December 2021
- iii. \$1,000.00 payable by the end of January 2022
- iv. \$1,000.00 payable by the end of February 2022
- v. These amounts will be paid by way of direct credit into Annalise's nominated bank account.

[11] Under clause 7 of the settlement agreement Neralcm agreed to make a contribution to Ms Sunde's legal costs of \$1,500.00 (plus GST) on receipt of an appropriate tax invoice from her representative. Ms Sunde has filed a tax invoice from her representative of \$1,725.00 (including GST), equating to \$1,500 plus GST. Ms Sunde confirms that the sum remains unpaid despite the invoice and a reminder being sent to Mr Harris as Neralcm's representative.

[12] The time for the payments to be received has well passed. Ms Sunde has not been paid. Mr Harris makes no assertion that any of the amount has been paid by the company. Rather he made the following statement:

As a result of the covid lockdowns and restrictions that the government has put in place, this directly impacted on the ability for my company to operate and generate income, as a result we've had to take measures to close the business down (solely because of the impacts of COVID-19).

...we are not in a position to meet the payments of the scheduled agreement we entered into... we would pay when we can, at this stage there is no clear indication within the next few weeks on when that would be as the cost of living continues to remain high, the cost of rent, power etc continues to increase and living on the minimum wage does not support that.

[13] There is thus an acceptance that payment has not been made.

[14] Neralcm has breached the agreement.

Should Neralcm have to comply?

[15] Neralcm committed to make payments under the settlement agreement. The resolution of employment relationship problems through settlement at mediation is an important part of the resolution process in the Act. Parties who commit to actions in settlement agreements must take their obligations seriously.

[16] The company's explanations about the reasons for non-payment do not justify its failure to meet its obligations under that agreement. There was a suggestion that company and personal bank statements could be provided but none were received. No attempt has been made since the start of the payment schedule some nine months ago to make any even modest payments. There is not a sufficient basis on which to justify requiring payments by instalments. Ms Sunde is entitled to receive the full sum promptly.

[17] Neralcm Limited is ordered to comply with the terms of the settlement agreement by paying the following sums within 21 days of the date of this determination:

- (i) \$5,000.00 without deduction to Ms Sunde; and
- (ii) \$1,725.00 (incl GST) as a contribution to her costs.

Should Mr Harris be joined?

[18] Ms Sunde asks the Authority to join Mr Harris to this proceeding. The settlement agreement provides in clause 6:

Should Neralcm default in making any of the payments set out in Clause 5 above Jay McLaren Harris undertakes to personally make these payments directly to Annalise.

[19] No comment from Mr Harris has been received.

[20] Mr Harris took on an obligation under the settlement agreement. This gives sufficient basis for him to be a party to this proceeding. Under s 221(a) of the Act I direct that Jay McLaren Harris be joined as second respondent in this proceeding.

[21] Mr Harris now faces a claim by Ms Sunde that a compliance order should be issued against him personally regarding the payments to her he undertook to make should Neralcm default.

[22] This determination is to be sent to Mr Harris via his email address. The Authority will shortly contact the parties to arrange a case management conference to discuss the claim against Mr Harris.

Costs

[23] Ms Sunde represented herself with the Authority. Neralcm is ordered to pay \$71.56 for the Authority's filing fee within 21 days of the date of this determination.

[24] Remaining costs issues are reserved.

Nicola Craig
Member of the Employment Relations Authority