

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2023] NZERA 13  
3184379

BETWEEN

JORDAN TEGUS  
Applicant

AND

JVL CONTRACTORS LIMITED  
Respondent

Member of Authority: Geoff O’Sullivan

Representatives: Dave Cain, advocate for the Applicant  
No appearance for the Respondent

Investigation Meeting: On the Papers

Date of Determination: 13 January 2023

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Jordan Tegos seeks orders for compliance, costs and penalties in relation to breaches of the terms of a settlement agreement certified by a Ministry of Business Innovation and Employment mediator under s 149 of the Employment Relations Act 2000 (the Act). The Record of Settlement (ROS) required payments of an agreed sum to be paid on an instalment basis. It further provided that JVL Contractors Limited (JVL) would pay costs plus GST on receipt of an invoice, again in instalments commencing on 30 March 2022 and continuing thereafter until payment was complete.

[2] Finally, under the record of ROS JVL agreed to provide Mr Tegos with a certificate of service detailing the period of employment, duties carried out and recording that the employment ended by way of resignation.

[3] Mr Tegus says that as at the date of his filing for compliance, the first payment had been paid but the next two payments were paid late. Likewise, payments towards costs were late with the last payment being received on 20 June 2022.

[4] The agreed certificate of service has yet to be provided. In its statement in reply, JVL says it has paid each invoice received and states it has made three payments under the arrangement, not two. That is correct, however Mr Tegus' complaint is that although he received the first payment, the next two payments were paid late and other payments are likely to be late too. Accordingly, it is the subsequent monthly payments that Mr Tegus says have not been made and indeed that is the case.

[5] In respect of the claimed breaches, JVL states it will pay funds as and when it receives money. This is an indication, that without further intervention, breaches of the ROS will continue.

[6] On 17 October 2022 a case management conference which had been notified to the parties was convened. JVL did not take part in that call but I am satisfied that it received advance notice of the case management conference and a copy of the subsequent direction which contained among other things, advice that the Authority would assume the Respondent was happy for the matter to be decided on the papers if it did not respond to the notice of direction by Tuesday 25 October 2022. No response was received. Accordingly, the Authority has moved to decide the matter on the papers.

[7] It appears that three payments only have been made to Mr Tegus, and four payments have been made to his representative on account of costs. Accordingly, JVL is behind in its payments and has breached the terms of the record of settlement.

[8] There is a public interest in having parties honouring terms of a settlement agreement made and certified in mediation. This favours an order for compliance. It is appropriate for a compliance order requiring JVL to comply with provisions of the settlement agreement.

[9] Under s 137 of the Act, JVL contractors ltd is ordered to comply with its continuing obligations by:

- (a) forthwith bringing the agreed payments up to date; and
- (b) forthwith providing the agreed certificate of service.

**Penalty**

[10] The Authority has been asked to impose a penalty for JVL's failure to meet its obligations under the settlement agreement. The maximum penalty which could be applied would be \$20,000. However, at this point, taking all factors into account, I conclude it is not appropriate to impose a penalty on JVL.

**Costs**

[11] Mr Tegus has been successful to the extent a compliance order has now been made against JVL. The need to file for a compliance order has been caused by JVL's default. Accordingly, JVL is ordered to reimburse Mr Tegus the following:

- (a) \$71.56 on account of the filing fee;
- (b) \$1,000 towards the costs incurred.

[12] These payments are to be made withing 14 days of the date of this determination.

**Geoff O'Sullivan**  
**Member of the Employment Relations Authority**