

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2020] NZERA 176  
3086692

BETWEEN CHARLIE WILSON  
Applicant

AND BATTIMAMZELLE PERSONAL  
CONCIERGE LIMITED  
Respondent

Member of Authority: Helen Doyle

Representatives: Alistair Wilson, advocate for the Applicant  
No appearance for the Respondent

Investigation Meeting: 1 May 2020 by Telephone

Submissions Received: 1 May 2020 from the Applicant

Date of Determination: 4 May 2020

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**DETERMINATION OF THE AUTHORITY**

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- A Battimamzelle Personal Concierge Limited (Battimamzelle) breached a Record of Settlement entered into under s 149 of the Employment Relations Act 2000 with Charlie Wilson.**
- B Battimamzelle is ordered to comply with the settlement agreement and pay to Charlie Wilson the sum of \$1,100 in six instalments of \$150 and one instalment of \$200.**
- C It is ordered to pay to Charlie Wilson a penalty in the sum of \$500 in two instalments of \$150 and one final instalment of \$200 to follow on from the last date of the payments of the amount in the settlement agreement.**
- D It is ordered to pay to Charlie Wilson the sum of \$71.56 being reimbursement of the filing fee by 17 July 2020.**
- E Failure to make the above payments on the dates set out in this determination will result in the full amount becoming due and owing.**

### **Employment Relationship Problem**

[1] Charlie Wilson says that Battimamzelle Personal Concierge Limited (Battimamzelle) has failed to pay him an amount in a Record of Settlement (the settlement agreement) entered into under s 149 of the Employment Relations Act 2000 (the Act).

[2] Mr Wilson seeks an order for compliance with the settlement agreement, a penalty for the breach of the settlement agreement and reimbursement of the filing fee of \$71.56.

[3] Battimamzelle do not disagree that an amount is outstanding under the settlement agreement but refer to financial difficulties.

### **The Authority Investigation**

[4] The matter was set down for a telephone investigation meeting on 1 May 2020.

[5] On 30 April 2020 the director of the Battimamzelle, Emily Odongo-Wadsworth, advised that she would not be attending the investigation meeting. She set out the reasons why but it is not necessary to record them. Ms Odongo-Wadsworth did not dispute Battimamzelle did not make the payment it agreed to under clause 3 of the settlement agreement. She said in her email that there were financial difficulties in doing so and proposed that the money be paid to Mr Wilson by way of instalments.

[6] The Authority asked for information about the financial position of the company. Ms Odongo-Wadsworth provided that by email on the morning of 1 May 2020 with provision of bank statements and information from the Inland Revenue Department.

[7] Mr Wilson was unable to attend the meeting because of work commitments. His father attended on his behalf and the Authority heard some limited evidence to confirm that the amount remained unpaid together with some other matters to enable it to proceed to determine the matter.

### **Prohibition from Publication**

[8] Except to the extent required I prohibit from publication other details in the settlement agreement.

**Outstanding payment due**

[9] Both parties agree the payments due in clause 2 and 5 of the settlement agreement have now been compiled with.<sup>1</sup> There was no time stipulation within which payments were to be made under these two clauses. In such circumstances the Authority may imply a term for payment within a reasonable time although has not had to turn its mind to that in determining this matter.

[10] The sum of \$1,100 referred to in clause 3 of the settlement agreement as compensation remains unpaid.

[11] That sum was to be paid to Mr Wilson within five working days of the date the settlement agreement was signed by the mediator. The record of settlement was signed by the parties on 22 November 2019 and certified by the mediator on 28 November 2019. Payment is considerably overdue.

**Order for Compliance**

[12] There was agreement on behalf of Mr Wilson to payment of \$1,100 by instalments as proposed by Ms Odongo-Wadsworth in her email of 30 April 2020.

[13] On its face the information supplied about the financial situation of Battimamzelle supports that is appropriate although the veracity of the financial information was not able to be tested by the Authority as there was no appearance on behalf of Battimamzelle at the investigation meeting.

[14] I order that Battimamzelle Personal Concierge Limited comply with clause 3 of the settlement agreement and pay the amount of \$1,100 by six instalments of \$150 per week and one final instalment of \$200.

[15] Ms Odongo-Wadsworth was advised by email from the Authority support officer on 1 May 2020 of the bank account within which the payments are to be made into. The payments should be made into that account.

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<sup>1</sup> Recorded in a notice of direction of the Authority dated 5 March 2020 at [2] following a telephone conference attended by representatives for both parties. There was reference to these amounts remaining unpaid in the statement of problem before the telephone conference.

[16] In the event that there is a failure to make the payments on the dates set out below the full amount owing under the settlement agreement will become due and owing:

8 May 2020	\$150
15 May 2020	\$150
22 May 2020	\$150
29 May 2020	\$150
5 June 2020	\$150
12 June 2020	\$150
19 June 2020	\$200

### **Penalty**

[17] A penalty is claimed for the breach of the settlement agreement.

[18] The Authority is able to award a penalty under s 149(4) of the Act if there is a breach of a settlement agreement. The primary purpose of a penalty is to punish wrongdoing and deter future breaches of settlement agreements.

[19] The Authority needs to have regard to the matters referred to in s 133A of the Act and other matters in determining the amount of the penalty.

[20] There is one breach by Battimanzelle of the settlement agreement. The maximum penalty for each breach in the case of a company is \$20,000.<sup>2</sup>

[21] I do not conclude the breach to be inadvertent or negligent. Whilst I accept that there were financial issues facing the company proactive steps should have been taken much sooner to advise Mr Wilson about this and propose payment in a manner other than by way of a lump sum. My understanding from Mr Wilson's father is that any direct communication on behalf of Battimanzelle would have been welcomed as would an apology for late payment. Those steps accompanied by an offer for payment by way of instalment and adherence to that would in all likelihood have prevented this matter escalating to the stage

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<sup>2</sup> Section 135(2)(b) of the Act

that it has. Instead Mr Wilson has been required to lodge an application with the Authority and pursue the matter over some months to attempt to obtain payment.

[22] Settlement agreements are designed to resolve employment relationship problems in a prompt manner giving certainty and finality to the parties so that both parties can move on. Mr Wilson entered into a settlement agreement with Battimamzelle to bring a sense of finality to the employment relationship. He has not had that finality and certainty. He has not had the use of the money as agreed he would in the settlement agreement.

[23] I weigh that Ms Odongo-Wadsworth apologised in her email of 30 April 2020 and other amounts agreed under the settlement agreement were paid. There is no information available to support that Battimamzelle has previously been found by the Authority or the Employment Court to have engaged in any similar conduct.

[24] To properly consider this application for a penalty the Authority asked Ms Odongo-Wadsworth for financial information which was supplied on the morning of 1 May 2020. The information supplied supports that the company and its operations did not appear to have progressed beyond an initial concept of a concierge service. The information supplied from Inland Revenue supports there was no income generated by Battimamzelle for the financial year 1 April 2019 to 31 March 2020. The material disclosed about bank accounts is that there is no money in the company bank accounts and there is no evidence to support the Battimamzelle has other assets.

[25] I consider that this is an appropriate case for the award of a penalty to discourage Battimamzelle from engaging in conduct of this nature in the future. If settlement agreements are entered into then they must be complied with. There has to be confidence that settlement agreements will be complied with as a matter of public policy.

[26] The Authority needs to impose a penalty that is proportionate and consistent with other similar cases. It must be at a level that takes into account all of the matters set out above including the financial position that Battimamzelle is in and the effect on Mr Wilson of the breach.

[27] I consider standing back in all the circumstances a suitable award for a penalty is the sum of \$500.

[28] That is at the lower end of the range of penalties for such a breach however the financial situation is such that in the circumstances of this particular case it would not be appropriate to make a higher award.

**Who should receive the penalty?**

[29] Mr Wilson has been deprived of the use of the money. The payment under the settlement agreement will not be adequate compensation for the considerable delay and time he has been without the money. It would be appropriate in those circumstances to make an order under s 136(2) of the Act that the whole of the penalty be payable to Charlie Wilson.

[30] Battimanzelle Personal Concierge Limited is ordered to pay to Charlie Wilson a penalty in the sum of \$500.

[31] It is to be paid by way of instalments as set out below to follow on after payment of the amount due under the settlement agreement. Failure to make any payment in accordance with the schedule below will result in the full amount being due and owing.

26 June 2020	\$150
3 July 2020	\$150
10 July 2020	\$200

**Reimbursement of Filing Fee**

[32] Mr Wilson is entitled to an order that he be reimbursed the sum of \$71.56 being the filing fee.

[33] I order Battimanzelle Personal Concierge Limited pay to Charlie Wilson the sum of \$71.56 by 17 July 2020.

**Helen Doyle**  
**Member of the Employment Relations Authority**

