

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Tiana Gaynor Ah Fook (Applicant)
AND EnviroWaste Services Limited (Respondent)
REPRESENTATIVES Tiana Ah Fook, in person
Ray Parmenter, counsel for the respondent
MEMBER OF AUTHORITY Marija Urlich
INVESTIGATION MEETING 19 May 2005
DATE OF DETERMINATION 24 May 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Ms Ah Fook's employment with EnviroWaste Services Limited ("EnviroWaste") ended in September 2004. In that same month she raised a personal grievance with her former employer for unjustified constructive dismissal and sexual harassment ("the personal grievances"). In November 2004 she lodged her employment relationship problem with the Authority. The parties attended mediation in early March 2005 without success.

[2] Ms Ah Fook now wishes the Authority to investigate her employment relationship problem. EnviroWaste says this cannot happen because the matter has been settled.

[3] This determination deals only with the preliminary issue of whether an agreement has been entered between the parties which stops Ms Ah Fook pursuing her personal grievances in the Authority.

Have the parties settled the employment relationship problem?

[4] On 17 March 2005, following the mediation, Ms Ah Fook visited Paul Bishop, EnviroWaste's CEO, at the company's offices. This meeting was not prearranged.

[5] Ms Ah Fook told me the purpose of her visit was to put the following proposal to Mr Bishop; if Mr Bishop agreed to give Ms Ah Fook a reference she would not pursue her personal grievances. Ms Ah-Fook said she wanted the personal grievances to end so she could get on with her career. Mr Bishop agreed to Ms Ah Fook's proposal. He told her he would draft a reference and send it out to her within a few days. They shook hands and the meeting ended.

[6] On the way out of the building Ms Ah Fook ran into some former co-workers. They told her about aspects of the investigation into her complaint of sexual harassment which, until then, she had

been unaware.

[7] On 21 March 2005 EnviroWaste's Corporate Service Manager, Shane Burke, wrote to Ms Ah Fook confirming the agreement. His letter included the following:

“..."

You have asked that in return for settling the personal grievance EnviroWaste provide you with a written reference. We are happy to do this, however, I would like to ensure that this is a full and final settlement and seek your agreement to do so. If you agree, please complete the attached document and return to me either in the self addressed envelop, or you can drop by and sign the document and pick up your reference at the same time.

...”

[8] Ms Ah Fook said she did not want to sign the terms of settlement because she wanted all legal proceedings to end and following her discussion with her co-workers on 17 March 2005 she felt matters were not settled between her and EnviroWaste.

Determination

[9] I am satisfied on the evidence received Ms Ah Fook and Mr Bishop reached a full and final settlement of her personal grievances on 17 March 2005. Ms Ah Fook's personal grievance was in the contemplation of the parties at the time; the parties had attended mediation concerning the personal grievance in early March 2005 and the personal grievances were the basis of the discussion during the 17 March 2005 meeting. The parties expressed their mutual desire to resolve matters amicably; Ms Ah Fook went to the meeting with this express intention and Mr Bishop readily agreed to her proposal. The parties agreed to exchange valuable consideration; the reference was not an obligation under the employment agreement.

[10] That the agreement has not been recorded in writing is not a barrier to the claim that a valid settlement was agreed between the parties (*Magnum Photo Supplied Ltd v Viko NZ Ltd* [1999] 1 NZLR 395 (CA)).

[11] Mr Burke's request to Ms Ah Fook to sign a terms of settlement does not provide a mechanism to avoid the agreement reached on 17 March 2005. The letter does not introduce a new condition to the settlement agreement and cannot be reasonably interpreted to mean EnviroWaste required Ms Ah Fook to sign the terms of settlement in exchange for the reference. There is no evidence the respondent used undue influence or duress to induce the settlement. That Ms Ah Fook received information after entering the agreement with EnviroWaste does not release her from the agreement. Ms Ah Fook initiated the settlement discussions and she is bound by the agreement reached with Mr Bishop on 17 March 2005.

[12] For the above reasons Ms Ah Fook is unable to pursue her personal grievances in the Authority.

Costs

[13] The issue of costs is reserved. I invite the parties to attempt to resolve this issue themselves. If they are unable to do so they may apply to the Authority to determine costs.

Marija Urlich
Member of Employment Relations Authority