

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Sonja Becker (Applicant)
AND Mosaner Collection Limited (Respondent)
REPRESENTATIVES Michael McFadden, Advocate for Applicant
Kate Trethewey, Counsel for Respondent
MEMBER OF AUTHORITY Dzintra King
INVESTIGATION MEETING 9 December 2005
DATE OF DETERMINATION 9 December 2005

DETERMINATION OF THE AUTHORITY

The applicant, Ms Sonia Becker, seeks a compliance order against the respondent, Mosaner Collection Limited. The respondent denies that it has breached the settlement agreement.

On 4 November the parties entered into a settlement agreement pursuant to s.149 Employment Relations Act 2000. The applicant says that the respondent has failed to pay her \$3,000. Paragraph 5 of the settlement agreement states:

The payment set out in paragraph 4 above, will be made to Sonja within 5 days of this agreement being executed by the parties and a Mediator employed by the Department of Labour subject to the other terms of this agreement having been completed.

Paragraph 9 states:

Sonja agrees to provide the information and/or undertake to do what is required of her in terms of the memorandum from Mosaner to Sonja dated 6 October 2005, a true copy of which is attached hereto.

Paragraph 4 of the memorandum reads:

Write a factual report of the events leading up to and including the dismissal of Franc Slebos. Include as much information as you can e.g. dates, times. Record what happening (sic) when you spoke to him on the phone and then later met him at the café for an informal verbal warning. Then also note your personal observations about his state of mind, emotional responses and anything else relevant. E.g. Fact:- At the informal disciplinary meeting at the café Franc ordered a beer. Observation:- this seemed inappropriate considering that you were there to discuss his conduct in regards to a drunken late night call.

The respondent says that the applicant has not provided a report which complies with the above requirement and that therefore it has no obligation to make payment. Ms Becker did write a report but the respondent was not satisfied with it. Ms Becker then provided an amended report. On 16 November Ms Trethewey wrote to Mr McFadden setting out additional and more detailed material which the respondent wanted included in the report. The issue for determination is whether Ms Becker's report complies with the paragraph 4 of the memorandum.

It should be noted that English is not Ms Becker's first language and that it is readily apparent to me that Ms Becker is not fluent in English. It was also very clear to me that Mr and Ms Mosaner were anticipating a report that was much more critical of Mr Slebos than the one provided. It emerged that there were areas of dispute between the parties as to what had happened in relation to Mr Slebos.

Ms Becker has set out a factual report of the events leading up to and including the dismissal of Mr Slebos. She has recorded what took place when she spoke to him on the phone and when she met him in the café. Ms Becker did record that she thought the phone call from Mr Slebos was "a bit strange".

The respondent says that Ms Becker has deliberately left important details out of the report. I do not accept that this is the case. Ms Becker has done her best, in good faith, to comply with the settlement agreement. If the respondent wanted certain details written into Ms Becker's report, like the ones identified in the 16 November email, it should have ensured that those details were part of the settlement agreement. There is no requirement in the settlement agreement that the report be to the satisfaction of the respondent. Ms Becker has written the report and amended the report. She has complied with the settlement agreement and the respondent should now pay the \$3,000 provided for in that agreement.

Mr McFadden has claimed a penalty. I do not think this is an appropriate case for the award of a penalty. I accept Ms Trethewey's submission that the respondent's failure to make payment was misguided. The respondent believed it had grounds not to make the payment.

The respondent is to pay the applicant the sum of \$3,000 forthwith.

Costs were reserved. Should the parties not be able to resolve the issue of costs the applicant should file a memorandum within 28 days of the date of this determination. The respondent should then file a memorandum in reply within 14 days of receipt of the applicant's memorandum.

Dzintra King
Member of Employment Relations Authority