

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 110/09  
5138830

BETWEEN                      GARRY MALCOLM  
   BELSHAM  
   Applicant

AND                              GREYMOUTH PETROLEUM  
   LIMITED  
   Respondent

Member of Authority:      P R Stapp

Representatives:            Mr Belsham in person  
   Cherie Clarke and Tim Brewer Counsel for Respondent

Investigation Meeting:     4 and 29 June 2009 at New Plymouth

Further correspondence    30 June 2009 and 2 July 2009

Determination:              14 August 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Mr Belsham filed his statement of problem in the Employment Relations Authority on 6 October 2008 claiming holiday pay and the enforcement of the ownership of a vehicle. The statement in reply from Greymouth Petroleum Limited (GPL) was filed on 17 October 2009 and denied all Mr Belsham's claims.

[2] Prior to the investigation meeting I had declined an application from GPL to vacate the fixture. On 4 June 2009 I adjourned my investigation meeting at the outset and vacated the fixture despite Mr Belsham's opposition to my decision. GPL made a further application for adjournment. Cherie Clarke, Counsel for GPL, attended the Authority's investigation meeting. I was concerned that the nature of the issues would mean that any investigation would have been incomplete without the

respondent's participation. I explained to Mr Belsham that even if I proceeded it would have been most likely I would have adjourned anyway to enable me to interview the respondent's witnesses.

[3] There are differences between the parties on key facts that are central to the claim. It was clear that the respondent wanted the opportunity to give evidence supported by (1) an unsigned statement of evidence produced, (2) the attendance of Ms Clarke at the investigation meeting on 4 June 2009 and (3) the receipt of the statement in reply and a bundle of numerated documents. It was also clear to me that despite the unsatisfactory situation surrounding the availability of GPL's witnesses on 4 June 2009 it was clear that they had relevant evidence to give, and it was entirely reasonable and proper to hear it at some stage. As it transpired both parties needed to complete their information for the investigation meeting, including Mr Belsham providing more details on the calculation of the sum of money he was claiming. I adjourned until 29 June 2009.

[4] Mr Belsham was employed by GPL under a purported fixed term arrangement. He says he obtained agreement from Mr Mark Dunphy, a GPL director, to exist his employment by working out his notice on salary and getting paid his holiday pay when he left. Mr Belsham says that Mr John Sturgess, another GPL director, told him that he could keep possession of a motor vehicle, when his employment ended, and which had been purchased for his use during his employment.

[5] Mr Dunphy denied that there was any exit arrangement agreed with Mr Belsham. GPL claimed the ownership of the car.

### **The issues**

[6] Was agreement reached between Mr Belsham and GPL on how the employment agreement would come to an end? Is Mr Belsham owed any holiday pay? Who owns the car?

**The facts**

[7] Mr Belsham commenced employment with GPL on 1 October 2005. He signed off a purported fixed term employment agreement. I accept that this agreement represented the parties' terms. It is common ground that the parties' intention was for a fixed term arrangement to apply. The employment ended on 30 September 2008.

[8] Mr Belsham was employed as operations manager. Under the agreement Mr Belsham's salary was \$79,278 per annum and a bonus of \$950. Mr Belsham says he was paid \$79,000 and a bonus of \$6,583 by GPL during his second year. He says at the end of the second year he reached agreement Mr Sturgess to continue as operations manager and be paid \$157,248 per annum. Mr Colin Willett, business services manager agreed that the salary increase was arranged, although he was surprised, and that he probably heard about it first from Mr Belsham. Mr Willett says he obtained authorisation to commence the payments because he could not have just relied on the advice from an employee.

[9] Mr Belsham has claimed that Mr Sturgess gave him the car and ownership of it when he left the employment, despite Mr Belsham not raising this initially during discussions with Mr Dunphy on ending the employment. GPL absolutely denied any such arrangement was made. There was no written variation of an agreement. There was no document produced to prove that such an arrangement was agreed.

[10] In or about June 2008 Mr Belsham says an agreement was reached with Mr Dunphy on settling arrangements to exit his employment agreement. He says the agreement included:

- That he would not return to work.
- That his salary of \$157,248 would be paid to the end of the fixed term.
- That he would be paid his holiday entitlement at the end of the fixed term.

[11] Mr Belsham says that his leaving arrangements included being allowed to keep the company car purchased for his use. He says he is supported in this because

the car was an entirely different model to any other one on GPL's fleet and he was allowed to purchase it with Mr Sturgess's approval.

[12] Mr Belsham says he never took any holidays during his employment, but has accepted that he was paid out his holiday pay in lieu for his first year (15 days). He says he is owed eight weeks holiday pay. Mr Belsham says he was paid his salary until 30 September, but not paid his holiday entitlement of \$30,240 (SOP). Mr Belsham is seeking the payment of his holiday pay and a declaration that the car is his.

[13] GPL says that there is no holiday pay owed to Mr Belsham because it was paid out in the period Mr Belsham was on leave before the expiry of the term of the fixed term agreement. GPL says that Mr Belsham was required to take 14 days leave in his second year of employment. GPL says that there was no agreement on a change of ownership of the vehicle and that it remains the property of GPL.

### **Determination**

[14] Mr Belsham has not established that he is owed any more for his holidays which were off set by GPL under the arrangement for the employment agreement to end. The employment agreement makes provision for leave to be taken by mutual agreement, but failing any agreement the employment agreement permits the employer to direct when annual holidays had to be taken, and this could include the period in which Mr Belsham was not working and being paid out. Thus he cannot claim any further entitlement to the unexpired portion of his purported fixed term agreement. There was no confirmation that Mr Belsham's terms were agreed before the discussions to end his employment with Mr Dunphy because:

- Mr Dunphy claimed that Mr Belsham had the use of the car in the meantime. This explains why Mr Belsham continued to use the car without any change in the ownership documentation.
- There was no evidence of any cars being gifted to other employees.
- There was no evidence that anyone else in the company had authorisation to give any car away.
- Mr Belsham could not contradict Mr Dunphy that he would consider the matters they had discussed.

- Mr Dunphy was supported by an email that there were discussions taking place that involved him and that he would consider any proposal.
- Mr Willett's evidence supported Mr Dunphy's evidence and was consistent with GPL's position on the matter.
- Mr Belsham did not make a claim that Mr Sturgess had gifted him a car during the initial discussions with Mr Dunphy.
- Mr Willett reached a reasonable conclusion, based on information from Mr Dunphy, that Mr Belsham would go on leave, as he was responsible for the pay out including holiday pay as requested by Mr Belsham.
- Mr Willett had no further instructions from Mr Dunphy. This explains why Mr Willett did not reply in writing any further to Mr Belsham. Mr Willett had nothing else to act on.
- Payments were made consistent with the payment of annual leave first, and secondly leave being taken, until the term expired.
- Mr Belsham did not have the full details of the holiday payment claim that was arguably due. His claim included a sum for the annual leave in the first year that Mr Belsham should have reasonably included since it appears to be common ground that it was paid out. He has not been able to contradict GPL's records from Mr Willett of his holidays in the time before taking leave until the expiry of his employment term. Any amount of leave owing was certainly covered by the period that Mr Belsham was on pay without working.

[15] Mr Belsham has not established that he is the owner of the motor vehicle despite Mr Sturgess not being available to appear and answer the allegation at the investigation meeting. GPL has not been assisted by the discovery that on another occasion Mr Willett had followed up a salary change that Mr Sturgess had agreed to orally with Mr Belsham, and where nothing was put in writing, and was raised by Mr Belsham first with Mr Willett. The significance of this is, however, affected by the fact that at the time, Mr Belsham raised his salary change with Mr Willett, and Mr Willett checked it out for approval. In regard to the car Mr Belsham never reasonably raised that at the time with anyone else when he says he obtained agreement with Mr Sturgess. For this reason I have come to the conclusion that despite what Mr Belsham

says he has not been able to establish that there was any agreement for him to have the ownership of the vehicle. Also, I have rejected that there was any agreement on ownership of the car for the following reasons:

- Such a significant term was not put in writing and there are no other documents that exist to support Mr Belsham's claims.
- Mr Willett had not heard of the arrangement. In fact Mr Willett knew nothing about it at the time.
- As Mr Willett had checked the changed salary there would appear to be some approval required that would have also applied to the gifting of a car and that it would require his attention for action.
- Mr Belsham made an offer to cease all legal action in full and final settlement if GPL let him have the car and he offered at one point to return the car, but then decided to hold off for his own reasons. These are not consistent with an agreed arrangement for ownership beforehand, I hold.
- The timing of Mr Belsham raising his claim on the car is not consistent with an agreement being reached with Mr Sturgess either.
- Mr Belsham's evidence that the car was bought for him personally, involved him buying it, and involved a different car from the rest of the fleet, do not support his claim. His claim is not assisted when it is considered alongside the evidence from Messrs Dunphy and Willett that no one else has been gifted a car, Mr Dunphy's approval as a director would be required and there had been no approval and no knowledge of any such arrangement.

### **Orders of the Authority**

[16] Mr Belsham's claims are dismissed.

[17] Costs are reserved.