Determination Number: CA 57/05
File Number: CEA 58/04

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY**
**CHRISTCHURCH OFFICE**

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| **BETWEEN** | Kevin Blair (Applicant) |
| **AND** | LWR Manufacturing Limited (Respondent) |
| **REPRESENTATIVES** | David Fleming, counsel for the applicant<br>Ken Anderson on behalf of the respondent |
| **MEMBER OF AUTHORITY** | James Crichton |
| **TELEPHONE CONFERENCE** | 21 February 2005 |
| **NOTICES OF DIRECTION** | 30 March 2005 and 6 April 2005 |
| **DATE OF DETERMINATION** | 22 April 2005 |

FURTHER DETERMINATION OF THE AUTHORITY

***Introduction***

[1] By determination dated 1 October 2004, member Cheyne disposed of the substantive matter between the applicant and the respondent.

[2] The Authority found that the applicant had a personal grievance and awarded him compensation of $12,000 with costs reserved.

[3] By application dated 22 November 2004 (received by the Authority at Christchurch on 10 December 2004) the respondent filed an application for the investigation to be re-opened. A statement in reply was filed with the Authority's Christchurch office on 17 December 2004 opposing the application for a re-hearing and making a cross application for a compliance order.

[4] On 21 February 2005 I convened a directions conference between the parties and/or their representatives and I proposed a course of action to the parties which received their assent.

[5] The application to re-open proceeded on three bases:

(a) An allegation that the decision was against the weight of evidence;

(b) An allegation of bias against the presiding member, Mr Cheyne; and

(c) An allegation that the decision was not informed by newly available evidence.

[6] As a first step, I undertook to discuss the matter with my colleague Mr Cheyne only on the bias allegation and then report further to the parties.

***The bias allegation***

[7] Mr Ken Anderson of the respondent accepted during the directions conference on 21 February last that an allegation of bias against a judicial officer is without doubt the most serious allegation that could be made against somebody in that role.

[8] In order to address that most serious allegation, I spoke formally with Mr Cheyne and invited him to comment on the allegation that he knew, or ought to have known, of the dispute between his brother and the respondent.

[9] Mr Cheyne satisfied me that he had no knowledge of the dispute until well after his determination was written and issued by him.

[10] Mr Cheyne advised me and I accepted without reservation that he learnt of the dispute between his brother and Lane Walker Rudkin only after receiving Mr Anderson's letter of complaint which itself pre-dated the application to re-open.

[11] Although at that time Mr Cheyne and his brother both resided in Christchurch, they did not live together and there was no reason why Mr Cheyne's brother would have disclosed to Mr Cheyne the circumstances of any argument he might have with the respondent and nothing in the pleadings or indeed the investigation meeting would have put Mr Cheyne on notice that he ought to have spoken with his brother on the matter.

[12] Immediately after conducting those enquiries, I directed my support officer to organise a further directions conference with the parties and/or their representatives so that that information could be imparted and considered by the parties. Despite a number of attempts to make contact with Mr Anderson of the respondent to arrange that telephone conference, no directions conference was able to be set up and accordingly I issued a notice of direction dated 30 March 2005 in which I:

(a) Imparted the information about the bias allegation just detailed; and

(b) Set out a provisional view about the other two grounds advanced by the respondent for the matter to be re-opened.

***The other grounds***

[13] The other grounds advanced by the respondent were that Mr Cheyne's decision was against the weight of evidence and that Mr Cheyne was not able to consider newly available evidence.

[14] As I indicated to the parties in my notice of direction dated 30 March 2005, neither of those allegations can be made out.

[15] As to the allegation that the decision made by Mr Cheyne was against the weight of evidence, I note that I have reviewed the decision and read the evidence and the pleadings filed by the parties. It seems to me the decision is well-reasoned, balanced and that the conclusion reached and the compensation awarded are well within the usual parameters for matters of this kind.

[16] As to allegation that Mr Cheyne did not have available to him all of the evidence, I accept the submission of David Fleming, counsel for the applicant that all of the matters referred to by the respondent as *new* matters were in fact before the Authority at the investigation meeting.

***Determination***

[17] It follows that the application to re-open this matter pursuant to schedule 2, clause 4 of the Employment Relations Act 2000 is dismissed.

[18] In accordance with the notice of direction I issued dated 6 April last, the respondent now has seven days to fulfil its obligations in terms of the original decision of the Authority made by member Cheyne. For the avoidance of doubt that requires the respondent to pay the applicant the sum of $12,000 pursuant to section 123 (c)(i) of the Act and to meet Mr Blair's costs at the figure already agreed between the parties of $1,200.

[19] In the event those payments are not made by the respondent to the applicant within seven days of the date hereof I will direct that the applicant's application for a compliance order in respect to the unpaid monies will be forthwith set down for hearing.

[20] In the event that the respondent pays the sums referred to within the timeframe stipulated the compliance order application will be withdrawn, all matters will be treated as at an end and the file closed.

[21] Costs in this proceeding are to lie where they fall.

James Crichton
Member of Employment Relations Authority