Determination Number: CA 87/04
File Number: CEA 278/03

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE

BETWEEN	Brady Brady (Applicant)
AND	Mary Potter Hospital (Respondent)
REPRESENTATIVES	Rob Davidson Counsel for the applicant John Shingleton Counsel for the respondent
MEMBER OF AUTHORITY	James Wilson
INVESTIGATION MEETING	30 June 2004
DATE OF DETERMINATION	10 August 2004

DETERMINATION OF THE AUTHORITY

Background

[1] In August 2003 the applicant, Brady Brady, lodged a statement of problem with the Authority alleging that she had been unjustifiably dismissed by her employer, the respondent, Mary Potter Hospital. Shortly afterwards Mary Potter replied saying that Ms Brady's dismissal had been, in their opinion, both justified and procedurally fair.

[2] The parties were not successful in the attempt to settle the employment relationship problem at mediation and an investigation meeting was scheduled for 27 April 2004. Shortly before this meeting was to take place the Authority was advised that the parties were close to reaching a settlement and they requested that the investigation be adjourned. Subsequently Mr Davidson advised that the parties had not reached a settlement and he requested that the Authority reschedule the investigation meeting.

[3] On 25 May 2004 Mr Shingleton, on behalf of Mary Potter, requested that the application be struck out on the grounds that the parties had reached a settlement agreement and that these settlement terms comprised *a valid and binding compromise in relation to the alleged personal grievance.* Mr Davidson has opposed the application to strike out and does not accept that *accord and satisfaction* had been reached between the parties in this matter.

The purported settlement

[4] In order to decide whether or not the parties have reached a binding settlement in regard to Ms Brady's personal grievance, it is necessary to briefly canvas the correspondence between the representatives:

(a) On 15 March 2004, in a letter endorsed "Without Prejudice save as to costs" Mr Singleton wrote to Mr Davidson saying, *inter alia*;

Thank you for your telephone advice that your client is now prepared to enter into settlement discussions and that she wishes to settle in the sum of $5,000.00 under Section123(c)(i) of the Employment Relations Act 2000 and $1000.00 towards her costs.

……

In an effort to nevertheless resolve the matter promptly without either Brady or the Hospital incurring further the legal costs, the Board is agreeable to settling full and finally in the amount of $4000.00 under Section 123(c)(i) of the Employment Relations Act 2000.

(b) On 18 March 2004 Mr Davidson, also on a "Without Prejudice" basis replied saying:

We do not accept your client's proposal to settle this matter in the sum of $4000.00……

In view of the fact that our client is now resident in Nelson, has found other employment and is now keen to put this matter behind her (she) has instructed that she is willing to settle the matter for the sum of $5,000 pursuant to Section 123(c)(i) of the Employment Relations Act 2000.

Our client has issued clear instructions that she is not prepared to accept any settlement sum less than $5,000……

We await your response to this offer.

(c) On 25 March 2004 Mr Shingleton again wrote to Mr Davidson saying:

We confirm our telephone advice that our client agrees to settle at $5,000.00 under 123(c)(i) of the Act.

We enclose a record of settlement for your approval. ……..

(d) On the April 2004 Mr Davidson wrote to the Authority:

I have now had an opportunity to discuss this matter with my client. I am now satisfied that there was a breakdown in communication and my client did not authorise settlement of this matter. Accordingly, my client has instructed that she is not prepared to agree to the proposed terms of settlement.

As such, my client has instructed that she wishes to proceed with this matter. ……

[5] Mr Shingleton argues that the correspondence outlined above indicates that the parties had reached agreement, that there was "an accord and satisfaction", and that that settlement disposes of the matter. Mr Shingleton has drawn my attention to the Authority's decision in *Joynt v BoT Manukau View School (*Y. Oldfield: AEA241/01, 22 August 2001), in which the parties had reached an agreement which was deemed to preclude the applicant from pursuing a personal grievance claim.

[6] Mr Davidson argues that settlement had not been reached by the parties and that the letter of 18 March stated that Ms Brady *had issued clear instructions that she was not prepared to accept any settlement sum less than $5,000.* It is Mr Davidson's contention that this statement did not

amount to an offer to settle the matter for $5,000, rather it was *merely a statement of the minimum she would settle for.*

Discussion

[7] The questions for me to determine in this matter are similar to those set out in by the Authority Member in *Joynt*, including:

- Was there in agreement between the parties? i.e. .was there an offer and acceptance?
- If so, did this agreement cover the issues between the parties? and
- Did this agreement include a consideration?

There is no dispute between the parties that the two representatives, Mr Shingleton and Mr Davidson, had authority to act on behalf of their respective clients. I find that, as a matter of fact Mr Davidson, in his letter of 18 March 2004, made an offer, on behalf of his client to settle this matter in the sum of $5,000. The final sentence in that letter says: *we await your response to this offer*. (my emphasis). In his letter of 20 March 2004 Mr Shingleton, on behalf of Mary Potter Hospital, accepted this offer. Correspondence between the parties clearly establishes that this settlement was intended to be in full and final settlement of Ms Brady's personal grievance claim against Mary Potter. It included, by way of consideration, the payment of $5,000. Mary Potter are entitled to rely on this agreement.

[8] Although neither Ms Brady, nor Mr Davidson on her behalf, signed the record of settlement drafted by Mr Shingleton I do not find that this negates the fact that a settlement was reached. Neither does the fact that the settlement was not signed by a mediator do so. As the Authority said in *Joynt.*

> *Although signature a by mediator assists parties in enforcement, an unsigned document may still amount to evidence of a valid and binding agreement.*

Determination

[9] I and satisfied that Ms Brady, through her properly authorised representative, entered into a binding agreement to settle her grievance with the respondent, Mary Potter Hospital. This agreement disposes of the matter and precludes me from further investigating Ms Brady's assertion that she was unjustifiably dismissed.

Costs

[10] The question of costs in respect to the application to strike out Ms Brady's application is reserved. The parties are urged to attempt to settle this issue between themselves. If they are unable to do so Mary Potter may file and serve an application in respect to costs within 21 days of the date of this determination. Ms Brady will then have 14 days in which to file and served a response.

James Wilson
Member of Employment Relations Authority