

dispute was before the Authority by dint of the damages issue having been raised in evidence and submissions relating to the interim reinstatement determination.

[3] The Authority is a specialist decision making body that is not inhibited by strict procedural requirements: see section 143(f) of the Employment Relations Act 2000. Its role is that of an investigative body charged with resolving employment relationship problems according to the substantial merits of a case without regard to technicalities. The Authority is not bound to treat a matter as being of the type described by the parties and may concentrate on resolving the employment relationship problem, however described: see section 160(3) of the Employment Relations Act 2000. Clause 1 of schedule 2 of Act says that *The Authority may, in performing its role, deal with any question related to the employment relationship, including- (a) any question connected with an employment agreement, being a question that arises in the course of any investigation in the Authority:*

[4] The dispute about the scope of the settlement is a question related to the employment relationship. It is also a question connected with an employment agreement arising in the course of an investigation into Mr Brown's personal grievance claim. The Authority is empowered to determine this aspect of the employment relationship problem.

[5] As arranged during the phone conference, counsel for the applicant lodged written submissions with copies of the correspondence said to be relevant to determining the dispute. Counsel for the respondent has also lodged submissions in reply. The context of the parties' settlement agreement emerges from the correspondence.

[6] In a letter dated 19 November 2007 the respondent's solicitors referred to a number of points related to the grievance, advised that they held instructions to claim \$5,000.00 in damages for the applicant's negligence and would amend the statement in reply to include that claim if the matter did not settle, and then wrote *Notwithstanding the above and in an attempt to address this matter in a pragmatic manner, our client has instructed us to forward a counter offer ...in full and final settlement* The applicant's solicitors responded with a counter offer by letter dated 26 November 2007. The respondent's solicitors replied on 30 November 2007 saying *We advise that our client does not accept the terms of settlement proposed in this letter. They re-extend their offer of \$...in settlement of the personal grievance raised*

by your client. That prompted a reply saying Our client reluctantly accepts the offer of ...Payment is required to be received in our office by 1pm Thursday, 6 December. ...On receipt of payment we will advise the Authority that the personal grievance is withdrawn. In the circumstances no separate agreement is required.

[7] There was some further correspondence by fax on 4 December 2007, the respondent's solicitors confirming proposed payment arrangements and saying *As previously advised, this is in full and final settlement of your client's personal grievance ...* and the applicant's solicitors saying *the payment ... will be full and final settlement of all matters between our respective clients* The payment was lodged into the solicitors' trust account overnight on 5 December 2007.

[8] I agree with counsel for the respondent that the communications after 3 December 2007 are not material. Counsel for the respondent submits that the terms of the settlement are to be found only in the exchange of faxes dated 30 November 2007 and 3 December 2007. However, that overlooks the express words used. The respondent *Re-extend[ed] their offer....* That reads as a clear reference back to the 19 November 2007 letter. Undoubtedly, the 19 November 2007 offer of a full and final settlement extended to the threatened damages claim. The later use of the word *re-extend*, viewed objectively, incorporates that aspect as well into the 3 December 2007 settlement of the personal grievance proceedings. It follows that the grievance proceedings are at an end as is the threatened damages claim against Mr Brown.

[9] For the sake of completeness, I should note that the order for interim reinstatement is also discharged.

Philip Cheyne
Member of the Employment Relations Authority