

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 8/08
5108526

BETWEEN

JEREMY COX
Applicant

AND

ALLIED TELEESIS LABS
LIMITED
Respondent

Member of Authority: Paul Montgomery

Representatives: Tim McKenzie, Counsel for Applicant
Penny Shaw, Advocate for Respondent

Investigation Meeting: 17 January 2008

Submissions received: 18 January 2008 for Applicant
22 January 2008 for Respondent

Determination: 29 January 2008

PRELIMINARY DETERMINATION OF THE AUTHORITY

[1] This matter relates to the preliminary issue of discovery. The applicant seeks discovery of information regarding redundancy payments made to former employees of the respondent.

[2] The applicant says that regardless of whether former employees had contractual entitlement to redundancy compensation, compensation was paid to those leaving the respondent due to redundancy. He seeks discovery of the information which, he says, will confirm the company's practice of paying such compensation regardless of contractual entitlement.

[3] The respondent opposes discovery on the basis that arrangements between the respondent and its former employees are confidential and further, that the information has no relevance to the substantive issue. It says that the Authority is prevented from

requiring discovery in this matter as the Court of Appeal in *Aoraki Corporation v McGavin* (1998) 1 ERNZ at 601, held that in order for redundancy compensation to be payable, it must be specifically required by an employment agreement or a redundancy agreement.

[4] The respondent says that for the Authority to order discovery in this case would be to overrule the Court of Appeal.

[5] Further the respondent says that the Authority cannot imply a term into the employment agreement requiring the respondent to pay compensation where there is no express provision for such a payment.

[6] I am of the view, given the paperwork before the Authority at this point, that this is not what the applicant is asking of the Authority. What is at the heart of this matter, it appears at this stage, is whether the applicant is being treated in a manner different from others in a redundancy situation regardless of the contractual terms between each individual employee and the respondent.

[7] To be plain, the Authority has no jurisdiction to imply a term into the arrangements between the applicant and the respondent. The Authority is however, entitled to require the respondent to provide to it, and, on suitably secure terms, the applicant, documents which may or may not establish whether the respondent has a case of disparity of treatment to answer.

The determination

[8] The respondent is directed to provide the Authority and counsel for the applicant the following information relating to the fifteen employees whose positions were declared redundant immediately prior to the applicant being terminated, and the five declared redundant immediately after the applicant's termination.

- (i) The relevant employment agreements with the identity of each employee removed;
- (ii) A synopsis sheet for each of the twenty employees containing:
 - (a) the date of termination;
 - (b) whether redundancy compensation was paid or not;

- (c) the length of service of each employee;
- (d) in the event that redundancy compensation was made, the formula used to calculate the payment.

[9] Mr McKenzie is directed to provide a solicitor's undertaking to the Authority and to the respondent confirming that the information provided under this direction will not be copied and will be used solely for the purposes of resolving the employment relationship problem between the parties.

[10] The representatives are to confer and arrange prompt delivery of these documents. In the event that difficulties arise, leave is reserved for either representative to return to the Authority for further directions.

Costs

[11] Costs are reserved.

Paul Montgomery
Member of the Employment Relations Authority