

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Canwest Radioworks Limited (Applicant)
AND Jason Reeves (Respondent)
REPRESENTATIVES Garry Pollak, counsel for applicant
Mark Ryan, counsel for respondent
MEMBER OF AUTHORITY Alastair Dumbleton
INVESTIGATION MEETING 17 August 2005
SUBMISSIONS RECEIVED 14 September 2005
DATE OF DETERMINATION 18 October 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant Canwest Radioworks Ltd (referred to as "CRL") and the respondent, Mr Jason Reeves, were in an employment relationship which ended in circumstances that caused Mr Reeves to bring a personal grievance claim to the Authority. His claim was eventually resolved by agreement of the parties, without any investigation being required by the Authority, although the agreement was endorsed as an order of the Authority. A subsequent problem has however arisen, this time over the observance of an express obligation under the agreement/order. CRL alleges that Mr Reeves has made "comment" on the grievance, in breach of that obligation.

[2] To resolve the latest problem CRL asks the Authority to make various orders against Mr Reeves. They are to obtain;

- rescission of the settlement agreement;
- reversal of performance under it between the parties;
- an accounting by Mr Reeves for profit unlawfully made from his alleged breach, and restitution to CRL of that profit;
- a penalty of \$10,000 for breach of the Authority's determination under which the settlement became a formal order;
- general damages to compensate CRL for breach of the determination;

- (in the alternative) compliance with the settlement agreement.

Mr Reeve's response to the application

[3] Mr Reeves denies breaching any of the terms of settlement of his grievance. He has applied to have CRL's application struck out as disclosing no cause of action. He contends that the Authority lacks jurisdiction to investigate some aspects of the claim and to make some of the orders sought by CRL.

Employment with CRL

[4] Until his employment with CRL ended Mr Reeves was one of the presenters of the breakfast show broadcast by The Edge, a radio station owned and managed by CRL. His co-hosts were Mr Dominic Harvey and Ms Jay-Jay Feeney. A feature of the breakfast show was the playing of pranks, including some played by the hosts on each other. A prank played on Mr Reeves by Mr Harvey and Ms Feeney was allowed to get out of hand, leading to the termination of Mr Reeves employment in November 2004 and to his bringing a personal grievance against CRL.

The terms of settlement

[5] A settlement of the grievance was reached between the parties on 16 June 2005, when an investigation meeting in the Authority was about to begin. The terms of settlement negotiated by them were recorded by the Authority, at the parties request, in an appendix to a formal determination issued next day, on 17 June 2005, under AA 221/05.

[6] Under the determination the terms of settlement were suppressed from publication. They will remain so except for the term CRL has accused Mr Reeves of breaching, which is as follows;

The parties agree that no further comment on this matter will be made and all matters are now resolved to everyone's satisfaction.

(my emphasis)

[7] The determination of 17 June also records that Mr Reeves and CRL agreed to issuing a public statement. One was drafted by them and read out by the Authority to those, including some journalists, who had been present for the investigation meeting.

[8] The public statement was as follows;

Joint statement of Jason Reeves and Canwest Radioworks Ltd

While Jason was employed on the breakfast show his co-hosts played an anonymous prank and Jason was the recipient of anonymous texting.

Unfortunately the texting had a detrimental and unforeseen effect on Jason and Tanya [Ms Tanya Pouwhare].

Canwest acknowledges it did not act quickly enough to allay Jason's concerns.

Jason attempted to continue in his role while a resolution was attempted however this was unsuccessful.

As a result the employment relationship terminated. This was regretted and not desired by either party.

As a result on November 10th The Edge broadcast a statement that Jason would no longer be returning to the breakfast show.

Canwest unreservedly apologises to Jason and Tanya for what happened.

The parties agree that no further comment on this matter will be made and all matters are now resolved to everyone's satisfaction.

(my emphasis)

The Woman's Weekly story

[9] A month after the parties' settlement was recorded and the above statement had been publicly made, the 18 July 2005 edition of the New Zealand Woman's Weekly published a story about Mr Reeves and Ms Tanya Pouwhare his partner. It was written by Mr Kieren Charteris who entitled it 'The most daunting year **of my life.**' The story included photographs of the pair and of Mr Reeves with his former Edge breakfast show co-hosts, Mr Harvey and Ms Feeney, in apparently happier times.

[10] The title of the story is adopted from a statement in it attributed to Mr Reeves, that, "... *for a number of reasons, the past year has been one of the most horrific and daunting times of my life.*"

[11] On 30 June 2005 to gather material for his story Mr Charteris had visited Mr Reeves home by arrangement with him. There he spent several hours speaking to Mr Reeves and to Ms Pouwhare.

[12] About six paragraphs of the story, more than a quarter of it, is devoted to the texting prank played anonymously on Mr Reeves by his former colleagues Mr Harvey and Ms Feeney, and also to the personal grievance Mr Reeves raised with his employer CRL in protest about that conduct. The story mentions that the texting grievance was settled "out of court" with CRL.

[13] The story also mentions the existence of rumours that Mr Reeves had received monetary compensation as part of the settlement. When asked about the way he had spent the rumoured compensation, Mr Reeves is reported in the story to have merely smiled, shaken his head and replied, ... "*We all agreed not to talk about the case.*" Neither Mr Reeves nor Ms Pouwhare is expressed to be the writer's informant in relation to anything else about the grievance or its settlement that is written in the Woman's Weekly story.

'Headliners'

[14] Five paragraphs of the Woman's Weekly story, more than a quarter of it, are about Mr Reeves involvement with the television show 'Headliners' which he currently presents for Television New Zealand. This arts and entertainment news show goes to air for 30 minutes on five nights a week in prime time. The subject or slant of the Woman's Weekly story is introduced in big letters at the beginning of it, as being the revelations of Mr Reeves as "Headliners presenter." The story is partly about that show and the achievement of it surviving the first 12 months on air.

Breach of terms of settlement

[15] To determine whether CRL should be given any of the orders the company has asked for, the

Authority must decide whether Mr Reeves has in any way breached the term of his settlement with CRL that required him after 16 June 2005 not to comment further on his texting grievance. First the Authority has investigated whether Mr Reeves himself directly commented on the settled grievance to anyone. This includes Mr Charteris to whom he spoke while the Woman's Weekly story was being written.

[16] The Authority has also investigated whether Mr Reeves, while not himself making comment, caused, encouraged or facilitated others having independent knowledge of the texting grievance to comment on it, as his mouthpiece or agent.

[17] I have found no evidence that Mr Reeves directly commented to anyone after 16 June on his grievance settled that day. It may be assumed that he and Ms Pouwhare have spoken of it privately to each other, but there is no suggestion that the term of settlement was intended to prevent them from doing so. The texting conduct giving rise to the grievance claim had closely drawn Ms Pouwhare into the prank as one of its victims. She was present during the settlement discussions that took place and part of that settlement was an apology addressed to her as well as to Mr Reeves.

[18] In an affidavit Mr Charteris has sworn that on 30 June 2005 when he met and interviewed Mr Reeves for the story, Mr Reeves did not comment at all about the grievance claim taken by him against CRL. I accept that evidence which is confirmed by the evidence of Ms Zara Potts, a publicist employed by Television New Zealand, who was also present during the interview. Since April 2005 she had pursued the opportunity to gain publicity for TVNZ's Headliners and for Mr Reeves, via a Woman's Weekly feature story. It was she who made the arrangements for Mr Charteris to interview Mr Reeves and in doing so, I accept, emphasised to both Mr Charteris and the magazine's editor that Mr Reeves would not be able to talk about his grievance claim which, at the time, had not been resolved by the Authority or settled by the parties.

[19] As well as the lack of independent evidence of any direct comment being made by Mr Reeves about the texting grievance, there is his denial in evidence that he did this at any time after settlement of his grievance. I accept that evidence. Mr Reeves presented as a truthful straightforward witness. I have found no reason to question his honesty and integrity.

[20] While Mr Reeves and Ms Pouwhare were deeply distressed and disturbed by the texting prank that was played on them, they seemed to me to be two people who are above settling scores, especially by underhand or unlawful means. I accept that Mr Reeves became genuinely concerned about the contents of the Woman's Weekly story as soon as he saw a draft of it before publication, and I accept that through Ms Potts he tried to have the writer change it. I do not consider that Mr Reeves took any secret satisfaction out of seeing the matter publicised again after he had settled and closed his grievance. What had always been essential to him if there was to be any settlement of his grievance, was to receive a public apology from CRL. I consider that he was satisfied when he got that and he had not wanted to exact more from CRL, through a Woman's Weekly story. While he and his partner very much regretted what happened they also wanted the matter to be buried and for it to stay that way after the settlement was reached.

[21] The more difficult question for the Authority is whether Mr Reeves unwisely and too trustingly volunteered to be the subject of a story in a magazine such as the Woman's Weekly and in that way inadvertently caused comment to be made, through the medium of the story, on the settled texting grievance. The story was written by Mr Charteris, who I accept from his sworn affidavit evidence was informed entirely by public knowledge of the grievance. Nevertheless, as a matter of construction did the story amount to a comment made by Mr Reeves?

Mr Reeves employer Television New Zealand

[22] I find that the impetus for having the Woman's Weekly story written and published, came not from Mr Reeves but from his employer Television New Zealand. TVNZ's interest in having the story run is made plain at the beginning from mention the story makes of the show Headliners. TVNZ through Ms Potts pursues similar publicity opportunities for all its news presenters. The Woman's Weekly story was just one of a number of such initiatives organised by Ms Potts for Mr Reeves and others, such as Ms Renee Wright who work with him on Headliners and who is mentioned in the story.

[23] When arranging for the story to be written Ms Potts did not secure for TVNZ copy approval of the story other than for inaccuracies in reporting what Mr Reeves had actually said. Full copy approval is something a magazine editor would obviously be reluctant to hand over to anyone else. I accept that when Ms Potts saw that Mr Charteris had written about Mr Reeve's grievance with CRL she tried to get him to remove mention of that before publication. Mr Charteris declined, saying that he had obtained the information independently of Mr Reeves and that it was already in the public domain because of interest the case had earlier attracted.

[24] Mr Reeves is a radio and television personality. In that profession he is partly reliant on media publicity to build his public profile. I do not think CRL could have thought that Mr Reeves would have absolutely no further contact with media representatives interested in doing a story on him, because of the risk that against his wishes the story's author might decide to spice it up by resurrecting things from his earlier life he hoped had been finished with.

[25] I find that the Woman's Weekly story on Mr Reeves had not been his to write and neither was he the one who pushed for it to be written. Mr Charteris wrote the story to suit the Woman's Weekly journalistic objectives and understandably he retained for the Woman's Weekly full control over content of the story. I find that Mr Reeves did not participate in the writing of the story to use Mr Charteris as his mouthpiece.

[26] I accept the evidence of Ms Potts, Mr Reeves and Ms Michelle Camilleri, Publicity Manager for TVNZ, that Mr Reeves did not benefit financially in any way from publication of the Woman's Weekly story. In this regard I accept that TVNZ has a strict policy that its presenters are not to receive any payment for media stories about them. Participation in the promotion of Headliners was something that TVNZ could reasonably expect, if not require, of Mr Reeves as part of the performance of his job.

Oblique comment

[27] Attention was drawn to the following comments of Mr Reeves which are quoted in the story;

[asked if his new TV set was paid for by compensation Mr Reeves is rumoured to have received to settle his grievance, he says] - *We all agreed not to talk about the case,.....What I can say is, for a number of reasons the past year has been one of the most horrific and daunting times of my life.*

[28] I do not consider that the quoted words can reasonably be construed as a comment made obliquely about the settled texting grievance and Mr Reeve's bad experience of that. The comment does not specify the particular causes of grief Mr Reeves experienced but simply says they were several. I accept the detailed evidence of Mr Reeves and Ms Pouwhare that there were a number of family crises during the year which were nothing to do with the personal grievance and which were upsetting and stressful for them. Mr Reeves comment is simply enigmatic, like the

smile he gave when asked about compensation.

[29] I do not consider that the juxtaposition in the story of the words written about the grievance by Mr Charteris and the words spoken by Mr Reeves, give the appearance that Mr Reeves is making a comment about his settled grievance claim. I find that the only words reasonably able to be imputed to Mr Reeves are those presented as his own which were actually uttered by him.

[30] For effect, in the Woman's Weekly story Mr Reeves comments are strung together, leaving out the question or prompting from Mr Charteris that would have preceded those comments. It is a matter of story construction by its author rather than the actual comments made by Mr Reeves, if there is any implication that his remarks about Mr Harvey and Ms Feeney are to do with the settled grievance. As well as being quoted free of their exact context, those comments are as much mundane pleasantries about future intent as they are about anything that happened in the past between the three.

Misrepresentation

[31] Management of CRL has complained in evidence that during the pre-settlement discussions on 16 June at the Authority, Mr Reeves deliberately misled CRL to believe that he would not be involved with the Woman's Weekly story on him then being planned, or that if there was a story it would not be about the texting grievance. CRL claims that the settlement was induced by misrepresentation and is able to be rescinded on that ground.

[32] The terms of settlement were fashioned and drafted by the parties, assisted by their counsel Mr Ryan and Mr Pollak. The written terms may be assumed to include all of the obligations the parties had intended to bind them. There is no reference at all in the draft settlement to Mr Reeve's involvement with the Woman's Weekly story, as there could have been. CRL could if it wished have been more precise with the wording of the terms of settlement, so that they addressed the planned Woman's Weekly story and the extent Mr Reeves could be involved in that. I do not consider there was any material misrepresentation in respect of any term regarded by the parties as essential to entry into their settlement.

Determination

[33] Mr Reeves bound himself not to comment to anyone about his settled grievance. I find he has not failed to observe that contractual obligation, which was also made an order of the Authority. CRL has no basis for obtaining any of the orders sought, and therefore no orders are made against Mr Reeves.

Jurisdiction

[34] Given the outcome of my investigation it is not necessary to consider the argument raised about the Authority's jurisdiction or the availability of some of the orders sought. I note however that the Employment Court has recently considered the enforceability of terms of settlement achieved by parties (without mediation assistance under s.149 of the Employment Relations Act 2000). In *Kerr v Associated Aviation (Wellington) Ltd* unreported, 17 August 2005, WC 17/05, the Court concluded that where the settlement has its origins in the employment relationship the Authority does have jurisdiction under s.161(1)(r) of the Act to consider questions of breach of the settlement and to award appropriate remedies. The Court referred to the remedies available under the Contractual Remedies Act 1979, under which cancellation is available (to the innocent party) and damages may be awarded.

[35] In Mr Reeve's case the agreed terms of settlement were also made a formal order of the Authority. In the course of reopening an investigation the Authority has the power to stay the effect of any order previously made by it; see clause 4 of Schedule 2 of the Act.

Compliance order of 20 July 2005

[36] This was made by consent to require Mr Reeves and CRL to observe the Authority's determination of 17 June 2005 in the interim until this determination had been given. The compliance order has served its purpose and is now discharged. I have found that the terms of settlement were not breached by either Mr Reeves or CRL.

Costs

[37] Costs are reserved to allow the parties an opportunity to resolve the question themselves. Application may be made in writing asking the Authority to fix costs, if there is no agreement.

A Dumbleton
Member of Employment Relations Authority