

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2016] NZERA Wellington 41
5444607

BETWEEN JOHN HOWARD CARTER
Applicant

AND THE SECRETARY OF THE
TREASURY
Respondent

Member of Authority: M B Loftus

Representatives: John Carter, on his own behalf
Anna Jacobs, Counsel for Respondent

Investigation Meeting: On the papers

Determination: 8 April 2016

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This is a dispute about Mr Carter's employment status and the effect of subsequent events.

[2] Mr Carter was employed by the New Zealand Post Office as a postman. On 6 September 1984 the Post Office purports to have annulled his appointment. Mr Carter contends it could not rightly do so and as a result of that and subsequent events he has remained in the employ of it and its successors.

[3] On 24 November 1994 the High Court concluded that albeit wrongfully, the Post Office had dismissed Mr Carter.¹ The Court concluded Mr Carter was entitled to an award of damages.

¹ *Carter v A/G* unreported Ellis J, CP781/87, 24 November 1994

[4] That led to a subsequent round of events about which there is considerable disagreement particularly over whether or not Mr Carter's claims were subsequently resolved. The Crown says this occurred in 1999; Mr Carter disagrees and adds that on 4 April 2005 he concluded an agreement which resulted in his reinstatement as an employee of the Crown. It follows that if this is correct considerable arrears are due but the Crown denies the existence of such a settlement.

[5] Mr Carter seeks a forum in which he can conclude his dispute which, along with allied claims, has been the subject of litigation in both the Authority and various Courts over a considerable period of time.

[6] One such attempt was dismissed by the Authority in 2006 largely on the basis Ellis J's decision² meant the Authority did not have jurisdiction to consider it.³ Mr Carter took issue with this conclusion and the way it was reached. He sought a re-opening which was granted.

[7] Subsequent attempts to advance the matter and the re-opening, involving various members of the Authority, have failed to result in a conclusion.

[8] In April 2015 I was assigned the file. In an attempt to advance the matter a telephone conference was held, agreement was reached that the matter be decided on the papers and a timetable for an exchange of submissions concluded.

[9] Mr Carter did not fulfil his obligations in this respect with his failure being attributable to a medical condition. Here it should be noted his assertions in this respect are supported by appropriate medical certifications which advise he is totally incapable of participating in the Authority's processes.

[10] There has been considerable correspondence about this between Mr Carter and the Authority, its Chief and various officers. This has culminated in a request the matter be adjourned *sine die*.⁴

[11] Given the medical evidence this request must, I conclude, be granted.

² n 1 above

³ *Carter v The Treasury* unreported GJ Wood, WA 2/06, 11 January 2006

⁴ Email Carter / Downie (Authority Support Officer) dated 23 March 2016

[12] That said, and the reason this request is being recognised via a determination and not a minute as would normally be the case, is that its granting effectively closes Mr Carter's claim as far as the Authority is concerned.

[13] This is because the medical evidence is Mr Carter's condition is permanent and will not improve. In other words he will never be capable of participating in the Authority's process. That means Mr Carters claim is, as far as the Authority is concerned, effectively discontinued. The file will now be closed.

M B Loftus
Member of the Employment Relations Authority