

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Anton Cheglov (Applicant)  
**AND** Vizor King Limited t/a Total Plastics (Respondent)  
**REPRESENTATIVES** Anton Cheglov In person  
Rebecca Teirney, Counsel for Respondent  
**MEMBER OF AUTHORITY** Leon Robinson  
**INVESTIGATION MEETING** 19 July 2005  
**DATE OF DETERMINATION** 17 August 2005

DETERMINATION OF THE AUTHORITY

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**The Authority determines that this employment relationship problem shall be resolved by the following orders:-**

- A. Vizor King Limited trading as Total Plastics is ordered to pay to Anton Cheglov the gross sum of \$3,500.00 as compensation.**
- B. Vizor King Limited trading as Total Plastics is ordered to pay to Anton Cheglov two weeks salary as wages in lieu of notice.**
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## The Problems

[1] Mr Anton Kazimir Cheglov (“Mr Cheglov”) asks the Authority to assist in the resolution of employment relationship problems he has with his former employer Vizor King Limited t/a Total Plastics (“Total Plastics”). He says he is owed a pay rise, relocation expenses and two weeks wages in lieu of notice when his position was declared redundant. He also challenges the decision that he was redundant.

[2] The parties were unable to resolve the differences between them by the use of mediation.

## The Issues

[3] A number of issues fall to be determined in resolving the problems between the parties:-

- (i) Is Mr Cheglov entitled to arrears of salary in respect of a promised pay rise?
- (ii) Is Mr Cheglov entitled to relocation assistance?
- (iii) Was Mr Cheglov’s dismissal for redundancy unjustified?

These issues are dealt with in turn.

## Terms of Employment

[4] Mr Cheglov faxed the managing director of Total Plastics Mr Tony King (“Mr King”) on 21 August 2003 seeking employment in electro-plating, following a telephone discussion they had that same date. Attached to the fax was Mr Cheglov’s resume. Mr Cheglov was resident in Australia although his fax provided New Zealand contact details.

[5] On 6 November 2003 Mr King emailed Mr Cheglov and advised that a position had arisen in the Plastics Department. He invited Mr Cheglov to make contact with him.

[6] Mr Cheglov replied by email the same day and advised:-

*Yes, I am very interested. When (sic) the position starts and when do you want to see me? For me it is better mid next week, I’ll be in Auckland then.*

[7] Mr King and Mr Cheglov met in Auckland on Thursday 13 November 2003. Mr King offered employment to Mr Cheglov and Mr Cheglov accepted.

[8] Unfortunately, and contrary to law, the terms of the employment were not recorded in writing. These employment relationship problems have their genesis in that omission. Mr King accepts that it was his obligation to comply with the provisions of the *Employment Relations Act 2000* (“the Act”) in this regard.

[9] Mr Cheglov asked for a salary of \$45,000.00 but Mr King offered him \$40,000.00. Mr King then said that he would be prepared to review the salary after three months if the company was going well and there had been improvements in the electroplating department. I find that there was agreement on a salary of \$40,000.00 which was to be reviewed after three months.

[10] Mr Cheglov told Mr King his family were in Australia. Mr Cheglov asked “*what about my family*”. Mr King then said he would look at assisting as long as the company could support it. I

find that there was an agreement in principle to look at assisting but there were no firm commitments.

[11] I accept that Mr King was optimistic that Mr Cheglov could bring real improvements to the company that would eventually translate to an increased salary and relocation assistance. That optimism however, turned out to be misplaced.

### **Arrears of salary**

[12] In February 2004, Mr Cheglov approached Mr King and asked for a pay rise. Mr King advised him that the company was not looking at pay rises because it was in a very bad financial situation. He said he would revisit the situation when the financial performance improved.

[13] Mr Cheglov claims he is owed a salary increase as from February 2004. I find that there was no promise of a pay rise but only an assurance in principle to look at the situation. That I find, occurred in the discussion between Mr Cheglov and Mr King in February 2004. **Accordingly, I am unable to find that Mr Cheglov is entitled to any claim for arrears of salary and I make no orders in relation to this claim.**

### **Relocation assistance**

[14] In June 2004 Mr Cheglov approached Mr King and again asked for a pay rise. Mr Cheglov also asked what assistance there was to relocate his family. I accept that he had raised the matter because it was school holidays. Mr Cheglov did not refer to any previous agreed contractual entitlement in asking for this assistance. In response to both requests, Mr King advised that the company was still in a bad financial position and could not meet either request.

[15] Mr King did however offer to pay for two one way tickets for Mr Cheglov's wife and child to fly from Queensland to Auckland. Mr Cheglov initially accepted but later declined the offer.

[16] Mr Cheglov claims he is owed relocation expenses. He does not quantify his alleged entitlement. His claim is too vague and it must fail for uncertainty. I find that there was no promise of a precise arrangement to meet relocation expenses. Rather, I find there was a commitment to visit the matter subject to Total Plastics being in a satisfactory financial position. **Accordingly, I am unable to find that Mr Cheglov is entitled to any claim for relocation expenses and I make no orders in relation to this claim.**

### **Dismissal for redundancy**

[17] Business was not good for Total Plastics. Mr King resolved that he needed to concentrate on marketing to secure new business as well as improve product quality. He employed a factory manager to enable him to further those efforts. Mr Malcolm Barnard Yates ("Mr Yates") was employed as factory manager. Unfortunately, nobody told Mr Cheglov.

[18] Mr King decided that he would have staff sign employment agreements. He had not provided one for Mr Cheglov. In September 2003 he did so. Mr Cheglov was not happy with it and did not sign it.

[19] In December 2003 Mr Yates sent a memorandum to Mr Cheglov. That memorandum stated:-

*Anton, it has been four months (3rd Sept) since we gave you your Individual Employment Agreement to sign. We feel you have had ample time to discuss any reasons why you are unable to sign the*

agreement.

...

*Due to the importance of the position you have within the company we feel that this should be discussed or settled by the end of your working day on or before Monday 13th December 2004.*

[20] Mr Cheglov responded with a memorandum dated 12 December 2004 proposing variations. He took issue with the reporting structure, requested relocation expenses, an increased salary of \$50,000.00, redundancy compensation and removal of a restraint of trade clause.

[21] Mr King responded with a memorandum dated 15 December 2004. He agreed to amend the reporting structure. He denied any entitlement to a salary increase and relocation expenses. He confirmed the remaining terms.

[22] Mr Cheglov did not sign the agreement and the situation remained unresolved.

[23] In February 2005, Mr King and Mr Yates met with employees to discuss Total Plastics' precarious financial position. The employees were invited to voluntarily reduce their hours of work as a means of reducing costs. However, the suggestion was not universally accepted and did not proceed. In discussions with Mr Cheglov, while he initially agreed to reduce his working week, he eventually resiled.

[24] On 18 February 2005, Mr King met with Mr Cheglov and gave him a memorandum informing him that his position was redundant. That advice stated:-

*Dear Anton*

*It is with regret that this letter is written confirmation (sic) that you have been informed by myself Tony King as Managing Director, that Total Plastics can no longer financially support your position within the company.*

*With this in mind Total Plastics is notifying you of 2 weeks paid redundancy notice, which will take effect from today, being Friday the 18<sup>th</sup> day of December 2005 at 4.30 pm.*

[25] I accept that Total Plastics' financial situation was such that it was justified in deciding that redundancies would be required. I also accept that the decision to make Mr Cheglov's position redundant was genuine.

[26] I accept too that Mr King and Mr Yates held collective and individual discussions with employees about the necessity to reduce costs. However, I am concerned that those discussions related to the situation generally and were not directed specifically to any one employee individually.

[27] I found Mr Yates to be a credible and believable witness and I accept his evidence. I put my concern to Mr Yates directly. He agreed with me more than once, and confirmed my stated view that Mr Cheglov did not have an opportunity to make his case. By that I meant that it appeared to me that Mr Cheglov was not consulted on an individual basis as to his own particular redundancy. I find that his input was never sought in relation to the justification for his dismissal and therefore, he had no opportunity to provide feedback on it.

[28] It is not for Mr Cheglov to guess that he might be made redundant and for him to then initiate a consultation in relation to his particular employment. That is always the employer's obligation ancillary to its management prerogative.

[29] It must follow then, that his dismissal for redundancy was unjustifiable because it was not effected in a fair and reasonable manner and it was not in accordance with the statutory duty of good faith the parties mutually owed to each other. While I find that the decision to make redundancies was justifiable, I find that the way in which the employer acted in making that decision in respect of Mr Cheglov were not the actions of a fair and reasonable employer.

[30] Mr Cheglov is entitled to be compensated for the unfairness in the process by which his position was deemed to be redundant. I accept that he has suffered humiliation, loss of dignity and injury to his feelings because of that unfairness. He is entitled to a modest award of compensation in the sum of \$3,500.00. **I order Vizor King Limited trading as Total Plastics to pay to Mr Cheglov the sum of \$3,500.00 as compensation pursuant to section 123(1)(c)(i) of the Employment Relations Act 2000.**

[31] Having made that finding and in considering both the nature and the extent of the remedies to be provided, I am bound by section 124 of the Act to consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance, and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly. I do not consider that there was any blameworthy conduct on Mr Cheglov's part as would require any reduction for contribution.

[32] As I have found the decision that Mr Cheglov's position was redundant was genuine, he is not entitled to reimbursement.

[33] Total Plastics has agreed to pay Mr Cheglov a further two weeks' salary as notice. **I order Vizor King Limited trading as Total Plastics to pay to Mr Cheglov two weeks salary as wages in lieu of notice.**

[34] Finally, I have earlier observed these employment relationship problems arise because there was no written individual employment agreement recording the terms of the employment relationship. The requirement for the same should now be demonstrably apparent to Total Plastics and it ought to appreciate the wisdom in having a signed employment agreement in place prior to the employee's commencement of work. I trust that it will now ensure it complies with the relevant legislative provisions to avoid similar problems arising in the future.

## **Costs**

[35] In the event that costs are sought, the parties are encouraged to resolve that question between them, but failing such agreement, Mr Cheglov is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. Ms Tierney is to lodge a memorandum in reply thereafter but within 28 days of the date of this Determination. I will not consider any application outside that timeframe.

Leon Robinson  
**Member of Employment Relations Authority**