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Clearkin v The Friendship Centre Trust Inc (Auckland) [2007] NZERA 29 (12 February 2007)

Determination Number: AA 29/07 File Number: 5046939

Under the [Employment Relations Act 2000](#)

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND OFFICE

BETWEEN Bronwyn Clearkin

AND The Friendship Centre Trust Inc

REPRESENTATIVES Bronwyn Clearkin in person

Paul Tremewan, advocate for the Friendship Centre Trust Inc

MEMBER OF AUTHORITY R A Monaghan

INFORMATION RECEIVED 1 and 9 February 2007

DATE OF DETERMINATION 12 February 2007

DETERMINATION OF THE AUTHORITY

[1] On 4 August 2006 Ms Clearkin filed a statement of problem in the Authority, identifying among other things that she had a personal grievance on the ground of unjustified dismissal, and a claim for unpaid wages including holiday pay and sick leave. Ms Clearkin provided further details of her problem in an amended statement of problem dated 29 August 2006, expanding in particular on allegations that she had been bullied and discriminated against, as well as providing more detail of her claim of unjustified dismissal.

[2] The employer party was the Friendship Centre Trust Inc ("the trust"). The parties agreed to attend mediation and the Authority referred the matter to the mediation service of the Department of Labour.

[3] A mediation meeting was held on 19 December 2006. Both parties and the mediator signed a written record of settlement of the same date. On its face the record of settlement complies with [s 149](#) of the [Employment Relations Act 2000](#). Clause 2 of the document recorded:

"This is a full and final settlement of all matters between the parties arising out of their employment relationship."

[4] On 29 December 2006 Ms Clearkin approached the Authority's registry saying she wanted to make a claim of undue influence in respect of the mediation for reasons she gave, and seeking an opportunity to put to the Authority her statement replying to the trust's formal statement in reply. By letter dated 10 January 2007 a support officer drew to Ms Clearkin's attention the provisions of [ss 148, 149](#) and [150](#) of the [Employment Relations Act](#), quoting those provisions. The letter asked Ms Clearkin whether, in the light of those provisions, she still wished to proceed.

[5] In a response dated 17 January 2007 Ms Clearkin advised that she did wish to proceed. Not only did she seek an opportunity to provide the statement to which I have referred, but she expressly wished the Authority to resolve concerns which were essentially those set out in the original statement of problem. In addition, she raised a concern about payment made to her under the terms of settlement.

[6] For its part, the trust said the matter had been resolved and the Authority could take no further action save for enforcement purposes. It asked that the Authority order that the matter be closed, save for enforcement purposes.

[7] The matter was then referred to me. It appeared that, in summary, Ms Clearkin was dissatisfied with the way in which the mediation had been conducted and wished the Authority to address her grievance and other concerns as if no settlement had

been reached. She had not appreciated the significance of the provisions of the Act which had been drawn to her attention.

[8] For that reason I issued both parties with a minute dated 25 January 2007, drawing particular attention to [s 149\(3\)](#) of the Act and referring to clause 2 of the settlement document. I went on to say in part:

"1. The grievance was part of the original statement of problem, and is covered by clause 2 of the record of settlement. The effect of [s 149\(3\)](#) of the Act is that the settlement is the end of the matter (that is, it is final and binding) and Ms Clearkin cannot now seek to question what happened in mediation, challenge the settlement or reargue her grievance in the Authority.

In summary, in the absence of any reason why [s 149](#) does not apply to the settlement, I will take the view that as a matter of law Ms Clearkin cannot reargue her grievance in the Authority and it will not be possible to investigate it further.

I invite Ms Clearkin's response to these matters. She should make particular reference to why [s 149](#) should not prevent her proceeding with her grievance and the associated concerns she has. ..."

[9] The minute also requested a further explanation of the concern about payment under the settlement. Clause 5 of the settlement set out a number of payments in respect of unpaid or underpaid wages, annual leave and sick leave, together with holiday pay accruing on those amounts. Information in response from the trust indicated all payments were made as set out in the terms of settlement. Aside from a provision relating to costs the payments were taxed, with the further exception of one payment which had apparently been identified as a net rather than a gross payment. Nothing in the information the trust provided indicated any breach of clause 5 of the settlement.

[10] Ms Clearkin's response to the minute addressed the matter of the payments. The response did not raise any allegation of breach of the terms of the settlement, rather issue was taken with the trust's accounting practices. Clause 5 of the settlement had also specified a figure payable in respect of unpaid or underpaid wages. Ms Clearkin sought to dispute that figure, but not in circumstances amounting to a request for enforcement.

[11] As for the rest of Ms Clearkin's response, it set out in more detail why she felt she had been subjected to undue influence in the mediation, as well as addressing again the factual background to her grievance in respect of her dismissal, and her other concerns. The 'other concerns' may amount to grievances in their own right, but the point is they were raised as part of the original employment relationship problem and I find all of the concerns are covered by clause 2 of the settlement agreement. Ms Clearkin's response was an attempt both to question the conduct of the mediation, and to reargue her concerns. It did not go any further.

[12] Unfortunately Ms Clearkin still has not appreciated the significance of [s 149\(3\)](#) of the Act. However aggrieved she may still feel, that provision binds her to the terms of the parties' settlement, and prevents her from bringing the terms before the Authority or the Court.

[13] For these reasons the Authority cannot take Ms Clearkin's employment relationship problem any further.

R A Monaghan
Member of Employment Relations Authority

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