

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Peter David James Cooke (Applicant)

**AND** Panda Catering Limited (Respondent)

**REPRESENTATIVES** P Cooke in person  
No appearance for respondent

**MEMBER OF AUTHORITY** R A Monaghan

**DATE OF DETERMINATION** 25 July 2007

**DETERMINATION OF THE AUTHORITY**

**Employment relationship problem**

[ 1] P David J Cooke had an employment relationship with Panda Catering Limited (“Panda Catering”), and has raised an employment relationship problem in respect of duties he carried out for it pursuant to its contract to provide catering services at Eden Park.

[ 2] In particular he disputed being moved from working in the members’ café to the dry store outlet, had a concern arising out of his alleged lateness to work on 17 May 2003, and a further concern about an incident on 16 August 2003. On 16 August 2006 he had been seconded to fry chips in the main kitchen in the ASB Building at Eden Park. It seems there was an incident that night, in the course of which he was asked not to fry any more chips. He expected to be required to work on 29 August 2003, but his services were not sought.

[ 3] Mr Cooke says he was unjustifiably dismissed. He filed his statement of problem in the Authority in early September 2003.

[ 4] Panda Catering filed a statement in reply saying Mr Cooke worked under a casual employment agreement. It filed a copy of a written, and signed, employment agreement to that effect. It further acknowledged Mr Cooke was not required to work on 29 August, and listed a number of other dates on which Mr Cooke had not been required to work either, apparently without any issues having arisen. It said there was work available for Mr Cooke on 21 September 2003, but it appears this prospect of work was not pursued.

**Attempts to resolve the employment relationship problem**

[ 5] After some difficulty in making the necessary arrangements an attempt at mediation went ahead in late 2004, but the matter was not resolved. An investigation meeting was set down for May 2005, but it did not proceed. Unfortunately by then Mr Cooke had embarked on an extensive set of correspondence raising questions and arguments of law that were misconceived. From time

to time during this period his contact details were unreliable and he was difficult to contact. In June 2006 he approached the Authority again about pursuing the matter.

**The employer's continued existence**

[ 6] Meanwhile, in November 2004 Panda Catering lost the contract at Eden Park. Michael O'Brien Catering Limited, an unrelated company, obtained the contract and purchased the Panda Catering business. There were new directors and shareholders and the company changed its name.

[ 7] Accordingly Panda Catering no longer exists. Mr Cooke cannot proceed against it if it no longer exists, and the Authority cannot take the matter any further.

[ 8] For Mr Cooke's further information, with reference to his letter to the Authority dated 19 April 2007 and in case the matter remains a concern, it is not necessary for him to formally resign from Panda Catering.

**R A Monaghan**  
**Member of Employment Relations Authority**