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Cowan v 900 Degrees NZ 2008 Limited (Wellington) [2017] NZERA 2019 (31 March 2017); [2017] NZERA Wellington 19

Last Updated: 14 April 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2017] NZERA Wellington 19
5638279

BETWEEN BERNADETTE MARIE COWAN Applicant

A N D 900 DEGREES NZ 2008

LIMITED Respondent

Member of Authority: T G Tetitaha

Representatives: J Grealley, Counsel for Applicant

P May, Counsel for Respondent

Investigation Meeting: On the papers

Submissions Received: 27 March 2017 from respondent

Date of Determination: 31 March 2017

DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

| | | |
|----|--|--------------|
| A. | Reopening is declined. The orders made in | the previous |
| B. | determination remain in place. Costs shall lie where they fall. | |

Employment relationship problem

[1] On 15 March 2017 a determination was issued finding Ms Cowan was unjustifiably dismissed directing she be paid any lost remuneration comprising unpaid leave taken and payment of compensation of \$5,000.¹

[2] Ms Cowan's lawyer has emailed the Authority. She had filed an amended

statement of problem (ASOP) by email to the Authority on 15 February 2017. The

ASOP increased the compensation sought from \$5,000 to \$18,000.

¹ *Bernadette Marie Cowan v 900 Degrees NZ 2008 Limited* [2017] NZERA Wellington 16.

[3] I directed the parties to file submissions about reopening the investigation in view of the ASOP and my decision had initially restricted the award of compensation to \$5,000 because that was the sum sought in the original statement of problem.

Reopening

[4] The Authority has a statutory discretion to order the reopening of an investigation on *such terms as it thinks reasonable* and in the meantime to stay the effect of any order previously made.²

[5] The overriding consideration must be the interests of justice, having regard to the likelihood of a miscarriage of justice balanced against other relevant factors such as the importance of finality in litigation. A mere possibility of a miscarriage of justice does not suffice.³

Determination

[6] Having considered both parties correspondence and submissions, I decline the reopening application. This is because:

- The ASOP was not directed by the Authority to be filed – it was filed at Ms

Cowan's instigation. No leave to file the ASOP was sought.

- It was received two weeks after this matter had been certified by the parties as ready for hearing on 1 March 2017.
 - The hearing had been set down at short notice within 1 month of the teleconference.
 - Timetabling orders had been made, evidence already filed and preparation had begun when the ASOP was filed.
- I had indicated that at most Ms Cowan's claims could attract an award of

\$10,000. At most the increase in her compensation would be by \$5,000.

- The respondent greatly contests any increase in the compensation amount.
- To reopen would require a remedies hearing about the compensation.

² [Employment Relations Act 2000](#), Schedule 2, clause 4.

³ *Young v Board of Trustees of Aorere College* [2013] NZEmpC 111 at [9].

- Given the daily costs tariff in the Authority have risen to \$4,500 per hearing day, the benefits of reopening would be greatly outweighed by the costs of doing so.
- There is a need for finality in this litigation.

[7] Given the Authority sought submissions about reopening, costs shall lie where they fall.

T G Tetitaha

Member of the Employment Relations Authority

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