

**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 Greally, 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 determination remain in place.

B. 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