

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 491/10
5245240

BETWEEN MARK RAYMOND CREEDY
Applicant

AND COMMISSIONER OF POLICE
Respondent

Member of Authority: Dzintra King

Representatives: Alex Hope, Counsel for Applicant
Sally McKechnie, Counsel for Respondent

Investigation Meeting: On the Papers

Determination: 22 November 2010

DETERMINATION OF THE AUTHORITY

EMPLOYMENT RELATIONSHIP PROBLEM

[1] Mr Creedy, the applicant, has filed a Statement of Problem claiming that he was disadvantaged in his employment by the unjustifiable actions of his employer on and before 4 April 2001.

[2] This matter has a lengthy history, having first come before the Authority and then to the Employment Court, the Court of Appeal and the Supreme Court.

[3] The Supreme Court determined that Mr Creedy was not able to pursue a personal grievance alleging he had been unjustifiably constructively dismissed.

[4] Therefore Mr Creedy is only able to bring a personal grievance claim regarding disadvantage he asserts he suffered prior to 4 April 2001.

[5] After the Statement of Problem and Statement in Reply had been filed the respondent filed a memorandum raising concerns regarding a number of matters in the Statement of Problem. The respondent asked that a number of preliminary matters be determined. These were:

- The scope of the investigation, in light of the Supreme Court ruling that Mr Creedy was not entitled to bring a dismissal grievance.
- The time period about which evidence will be heard.
- The remedies available to the applicant.
- The quantification of the losses referred to in the Statement of Problem.

[6] The respondent sought a preliminary ruling that:

- a. Reinstatement was not an available remedy.
- b. Lost wages were not an available remedy as the applicant had remained on full pay during the period of his suspension.

[7] The respondent also sought that the applicant be required to:

- Specify and quantify the benefits he claimed he might reasonably have expected to obtain had the alleged unjustified disadvantage not occurred.
- If the applicant was allowed to claim lost wages he should quantify the losses.
- Quantify the amount sought for pursuant to s 123 (1) (c) (1).
- He should quantify the amount he sought by way of payment consequent upon his disengagement from the Police.

[8] The parties made written submissions which I have duly considered.

[9] I agree with the respondent that the Statement of Problem attempts to present the post 4 April 2001 events as part of a chain of events integral to the events which Mr Creedy is able to have heard as personal grievance. The post 4 April 2001 events relate to the alleged constructive dismissal. Although the applicant's submissions state that Mr Creedy does not seek remedies for the dismissal it is evident that is exactly what he does wish to do.

[10] Mr Hope states that he wishes to call evidence regarding matters post 4 April 2001 to place the respondent's actions in context and "to show the chain of causation between the losses suffered on and from 13 December 2001 and the unjustifiable actions that occurred between the period of September 2000 and 4 April 2001."

[11] Mr Hope refers to *Coy v Commissioner of Police* (unreported, CRC 12/07, 19 November 2007, Colgan CJ) that evidence of time barred events is permissible in order to provide context. The problem is that in *Coy* the evidence related to events predating the grievance and what Mr Creedy seeks to have introduced is evidence post the grievance. While evidence about the effect of a grievance on a person is admissible in terms of assessing a claim for humiliation and distress and loss of wages, in this case the evidence would necessarily need to deal with the alleged constructive dismissal and that is where the applicant faces the problem that that matter cannot be heard. I will hear evidence regarding the effect of the unjustified disadvantage upon the applicant but that cannot be regarding the alleged dismissal.

[12] Mr Creedy is no longer an employee. For a reinstatement claim to be successful he would need to show that he had been unjustifiably dismissed, which he is unable to do.

[13] There is no connection between the disadvantage grievance and reinstating Mr Creedy to a position from which he disengaged, a matter which he cannot contest.

[14] Mr Creedy was suspended on full pay and cannot have lost any wages or benefits as a result of his alleged disadvantage. Such a claim could only arise from an unjustified dismissal grievance which Mr Creedy cannot pursue. Any remedies must flow from the grievance.

[15] The applicant has not specified the nature of the benefits, quantified the loss of wages or the amount sought as compensation. Neither has he quantified the amount obtained subsequent to his disengagement.

[16] The applicant is to quantify the compensation sought.

[17] In his submissions Mr Hope has raised the matter of a claim for wages as a result of the loss of chance of promotion. This was not in the Statement of Problem. If the applicant wishes to raise this an amended Statement of Problem should be filed and it should be noted that this claim can only related to any disadvantage, not to the alleged dismissal.

[18] Costs are reserved. At this stage I intend to deal with costs after hearing the grievance.

Dzintra King

Member of the Employment Relations Authority