

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
OFFICE**

BETWEEN Mark Dunlop
AND Prime Resources Company Limited
REPRESENTATIVES Richard McIlraith for the Respondent
**MEMBER OF AUTHORITY
ON THE PAPERS** Dzintra King
Applicant's submissions on the 16th of June and 4th of July 2006
Respondent's submissions on the 28th of June and 14th of July
2006
DATE OF DETERMINATION 20 September 2006

DETERMINATION OF THE AUTHORITY

The applicant, Mr Mark Dunlop, seeks a compliance order. Mr Dunlop raised a personal grievance with the respondent, Prime Resources Limited and sought to attend mediation. He claims that his employment contract provides for an initial private mediation and this is the avenue Mr Dunlop wanted to pursue. The respondent was amenable to mediation but wanted to use the services of The Mediation Service. The respondent says that the clause in Mr Dunlop's contract deals only with in-house disputes when there is still an ongoing employment relationship.

Clause 15 of the employment agreement is as follows:

15 Disputes and Grievances procedures

The Employment Relations Act provides resolution for disputes and personal grievances.

The parties agree acknowledge that it is desirable for personal grievances and disputes to be addressed as soon as possible after they arise.

15.1 Firstly any dispute or grievance should be resolved in house as per the detailed procedure below:

15.1.1. Where you consider you have grounds for a personal grievance or dispute you may seek assistance to have the personal grievance or dispute resolved.

15.1.2 You will put the personal grievance or dispute in writing and submit to your manager or boss for action within 90 days of it arising or you becoming aware of the grounds giving rise to it.

15.1.3 Your manager or boss will respond to your personal grievance in writing within 14 days of receiving it and will advise you of the action Prime Resources intends to take.

15.1.4 Should you be dissatisfied with the response you have received you may advise to your manager or boss at Prime Resources that you require your personal grievance or dispute to be heard in front of an independent mediator paid for by Prime Resources. The parties will agree on a mediator from the list of members of the Arbitrators and Mediators' Institute of New Zealand Inc or failing agreement, a mediator will be

nominated on the application of either party by the president of the New Zealand Law Society or their nominee.

151.5 The mediator will receive submissions from both parties to the personal grievance or dispute which may be in any form deemed appropriate by the mediator.

151.6 You will be supported in the presentation of your personal grievance or dispute by any other person, including a bargaining agent.

151.7 Prime Resources may be represented by any other person.

151.8 The mediator may ask for evidence from witnesses where the nature of the personal grievance or dispute suggests such evidence may assist in the process of resolution.

151.9 The mediator will assist the parties to reach a solution.

151.10 At any time during the mediation the parties may agree to ask the mediator to make a final binding decision on the personal grievance or dispute which will be recorded in writing. There will be no appeal from any such decision.

151.11 In the event that no solution is reached in the mediation either party is free to refer the personal grievance or dispute to the Mediation Services Department.

15.2 You may refer your dispute or grievance to the Mediation Services Department.

15.3 If the dispute or grievance is not resolved by the Mediation Services it can be referred to the Employment Relations Authority.

Clause 15.1 refers to "any dispute or grievance" being dealt with in accordance with the procedure set out in clause 15.1. Clause 15.1.4 provides that if the employee is dissatisfied with the employer's response then "you may require your personal grievance or dispute to be heard in front of an independent mediator paid for by Prime Resources". There is no ambiguity here: the wording is clear. It is any personal grievance, not just a grievance that occurs while the employment is ongoing, that the employee may require to be referred to a private mediator.

Mr McIlraith for the respondent argued that the interpretation contended for by Mr Dunlop would make clause 15.2 redundant because clause 15.1.11 already envisaged the parties referring a grievance to the Mediation Service.

This interpretation ignores the fact that clause 15.1 starts with the word "Firstly" and that the whole of clause 15.1 deals with the process if a private mediator is used ending, at clause 15.1.11 with what can happen if no solution is reached in the private mediation forum.

Clause 15.2 is clearly the second step in the process. This interpretation is endorsed by the fact that clause 15.3 refers to the matter being referable to the Employment Relations Authority if no resolution is reached by using the Mediation Service, which is the third step.

The respondent is to comply forthwith with the provisions of clause 15 of the applicant's employment agreement.

Costs

If the parties are unable to agree on costs the applicant should file a memorandum within 28 days of the date of this determination and the respondent should reply within 14 days of receipt of the applicant's memorandum.

Dzintra King
Member of Employment Relations Authority