

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Bill Easdon (Applicant)
AND Label and Litho Limited (Respondent)
REPRESENTATIVES Jim Roberts - For the Applicant
Camilla Welch and David Kincaid - For the Respondent
MEMBER OF AUTHORITY Ken Anderson
DATE OF DETERMINATION 19 April 2005

SUPPLEMENTARY DETERMINATION OF THE AUTHORITY

The Problem

- [1] In a determination dated 18 November 2004,¹ the Authority found that Mr Easdon had a personal grievance because he had incurred an unjustified disadvantage. He was awarded the remedy of compensation of the sum of \$1,000.00.
- [2] The Authority also found that Mr Easdon had breached a term of his employment agreement in that he failed to give two weeks' notice of the termination of his employment. Mr Easdon was ordered to pay Label and Litho two weeks' wages being the sum of \$2,038.46.
- [3] It was appropriate to set-off the remedy of compensation against the two weeks' wages. Hence, the final order was that Mr Easdon was to pay Label and Litho the sum of \$1,038.46.
- [4] However, on 22 November 2004, Mr Roberts submitted that two errors existed in the determination and that it should be recalled and corrected.
- [5] Firstly, attention was drawn to the fact that Mr Easdon gave written notice of his resignation on 28 January 2004, effective immediately. A medical certificate provided at the same time, showed that Mr Easdon was unfit to resume work for 7 days from 27 January 2004. The effect of this being that Mr Easdon was not medically able to work out the first week of his notice. Therefore, only one week of the notice period required was at issue.
- [6] The second matter that Mr Roberts drew attention to is that the employment agreement provided for the "*forfeiture*" of two weeks' pay in the event of the employee failing to give that period of notice. However, because Mr Easdon had received all monies owing to him prior to presenting his resignation, the reality of the position was that there were no monies available to forfeit. Therefore, the order of the Authority was nugatory, as too was the set-off.

¹ AA 376/04

- [7] Neither of these matters was raised in the original submissions made to the Authority on behalf of Mr Easdon, prior to the substantive matter being determined.
- [8] The matters at issue were subsequently discussed in a conference call with the parties and Label and Litho, while not satisfied, appear to accept that overall, the substance of the submissions for Mr Easdon is correct.

The Appropriate Action

- [9] It has been advanced for Mr Easdon that the substantive determination should be recalled and corrected. That is one possible option. Another option was to require Mr Easdon to make an application to have the investigation reopened and present formal evidence and submissions. However, both of those options are unwieldy and the latter involves further unwarranted expense, particularly given the overall monetary value of the subject matter.
- [10] I conclude that the preferable option is to exercise the inherent powers given to the Authority under s.160 of the Employment Relations Act 2000, in order to finally resolve the employment relationship problem.
- [11] I also believe that it is appropriate to exercise the equity and good conscience jurisdiction of the Authority in order to resolve the problem that has arisen.

Determination

- [12] Having given consideration to the submissions advanced on behalf of Mr Easdon and having taken into account the relevant evidence relating to those submissions, I accept that Mr Easdon is not required to pay to Label and Litho a sum equivalent two weeks' wages as ordered in the determination of the Authority dated 18 November 2004, as it is now proven that no monies were available to be forfeited.
- [13] The order requiring Mr Easdon to pay the sum of \$2,038.46 is rescinded from the date of this determination.
- [14] The effect of rescinding the original order is that it is now no longer possible for a set-off pertaining to the remedy of compensation to occur. Therefore, a new order is required.

Pursuant to s.123(c)(i) of the Employment Relations Act 2000, Label and Litho Limited is ordered to pay to Mr Easdon the sum of \$1,000.00.

Costs

- [15] It remains appropriate that costs should lie where they fall and it is so ordered.

Ken Anderson
Member
Employment Relations Authority