

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 422
5372315

BETWEEN SIMON MAXWELL
 EDWARDS
 Applicant

A N D TWO DEGREES MOBILE
 LIMITED
 Respondent

Member of Authority: Alastair Dumbleton

Representatives: Peter Churchman and Michael O'Brien, counsel for
 Applicant
 Harry Waalkens QC and Penny Swarbrick, counsel for
 Respondent

Application Received: 26 November 2012

Date of Determination: 27 November 2012

DETERMINATION OF THE AUTHORITY

Reopening of Investigation

[1] In its determination dated 1 October 2012 – [2012] NZERA Auckland 342 – the Authority made findings as to liability in respect of several problems that had arisen under an employment relationship between the applicant, Mr Simon (Tex) Edwards, and the respondent, Two Degrees Mobile Ltd.

[2] Orders for remedies made in furtherance of those findings included an order requiring Two Degrees to pay a penalty of \$4,000 to the Authority, for breach by the company of Mr Edwards' employment agreement.

[3] By joint memorandum of counsel for the parties dated 23 November 2012, Mr Edwards and Two Degrees applied to have the Authority reopen the investigation disposed of by the 1 October 2012 determination.

[4] The grounds for the application are that the parties have comprehensively settled the issues between them and in consequence Mr Edwards wishes to withdraw his claim for a penalty against Two Degrees.

[5] Mr Edwards, with the consent of Two Degrees, has sought an order that the Authority rescind or quash the order in para.[62] of its determination requiring payment of a penalty by Two Degrees.

[6] Under clause 4 of Schedule 2 of the Employment Relations Act 2000, the Authority may order an investigation to be reopened upon such terms as it thinks reasonable and in the meantime to stay the effect of any order previously made.

[7] Accordingly, by consent, the Authority orders a reopening of the investigation in this matter and directs a stay of the order requiring Two Degrees to pay a penalty of \$4,000 to the Authority. That money has not yet been paid.

[8] Clause 14 of Schedule 2 of the Act provides that any matter before the Authority may at any time be withdrawn by the applicant. Having been reopened, the matter of the penalty claim is once again before the Authority.

[9] Accordingly, upon reopening being granted the order made at para.[62] of the 1 October 2012 determination is set aside, and upon the withdrawal by Mr Edwards of his application for a penalty that order is quashed.

[10] There is no issue as to costs.

A Dumbleton
Member of the Employment Relations Authority