

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 151/10
5291280

BETWEEN MALCOLM FERGUSON
Applicant
AND ROTATIONAL PLASTICS NZ
LIMITED
Respondent

Member of Authority: Vicki Campbell
Representatives: Applicant in Person
Mike Bryce for Respondent
Investigation Meeting: 24 March 2010 at Hamilton
Determination: 30 March 2010

DETERMINATION OF THE AUTHORITY

[1] Mr Ferguson claims Rotational Plastics NZ Limited (“Rotational Plastics”) has failed to honour a settlement agreement entered into by the parties on 9 September 2009 as a result of mediation provided by the Department of Labour. Mr Ferguson seeks compliance with the terms of the agreement.

[2] The Authority has a copy of the Record of Settlement signed by the Mediator and endorsed to the effect that the mediator had explained to the parties that the settlement was final, binding and enforceable.

[3] To settle the employment relationship problem Rotational Plastics agreed in the Record of Settlement, among other things, to pay to Mr Ferguson various sums of money on specified dates. While some or part of some payments were late being paid, Mr Ferguson has received all monies owed to him under the Record of Settlement with the exception of \$188.99 which Mr Ferguson says was deducted from the final payment.

[4] Mr Mike Bryce, admits the deduction was made and relies on the employment agreement between the parties to justify the deduction. He says Mr Ferguson failed to

return company property and therefore pursuant to clause h) under the Termination provision of the employment agreement, he made a reduction for the value of the property.

[5] The employment agreement under Termination - clause h) states:

All issued employer property is to be returned and any money owed to the employer repaid before the final payment is made. If this provision is not complied with, the value of any unreturned employer property and any debts to the employer shall be deducted from any final payment(s) made to you.

[6] Mr Bryce says Mr Ferguson failed to return 2 shirts, 1 fleece and 1 rain jacket. With the exception of the fleece, the other property was returned to Mr Bryce at the investigation meeting.

[7] The Record of Settlement states that it is in full and final settlement of "...all matters..." between the parties. There is no provision in the Record of Settlement for the return of property, nor is there any provision for any deductions to be made from the final payment amount. This was not a final payment under the employment agreement, but was a settlement payment by way of an agreed settlement of all employment related matters. Such a payment can not be subject to any deductions pursuant the employment agreement and must be made according to the terms of the Record of Settlement.

[8] It follows that Mr Ferguson was entitled to receive the full settlement amounts which includes the \$188.99 deducted for unreturned property.

Rotational Plastics NZ Limited is ordered to comply with the Record of Settlement and pay to Mr Ferguson the outstanding amount of \$188.99 pursuant to section 137 of the Employment Relations Act immediately.

Costs

[9] Mr Ferguson shall have the lodgement fee on his application.

Rotational Plastics NZ Limited is ordered to pay to Mr Ferguson \$70.00 being the lodgement fee on his application.

Vicki Campbell
Member of Employment Relations Authority