

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 110
5367003

BETWEEN FRANK JOHN FIFIELD
 Applicant

A N D RAY KEARNS
 Respondent

Member of Authority: Alastair Dumbleton

Representatives: Applicant in person

Date of Determination (on
papers): 28 March 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] It is clear from the application lodged by Mr Frank Fifield and the information obtained by the Authority from him subsequently, that his contended employment relationship problem arises from a dismissal that occurred when he was employed by the Rotorua District Council. Although Mr Ray Kearns has been named as the respondent party to the application, he appears to have been another employee of the Council and a supervisor of Mr Fifield at the time of the dismissal but was not his employer.

[2] To remedy the dismissal, which occurred over 20 years ago in or about 1989, Mr Fifield seeks a number of monetary awards including compensation for a 24 year period (presumably 1988 to 2012), strike pay and redundancy-service pay.

[3] An earlier application received by Mr Fifield in November 2011 was returned to him with the Authority's advice that it appeared to be the same as the one he had made in 2010, which was about his dismissal by the *City Council* of Rotorua. Mr Fifield was advised that a decision of the Court of Appeal given in 2007 had made

it clear that litigation taken by him to the Labour Court in 1989 and 1990 had been finally concluded. He was advised that finality having been achieved there was no jurisdictional basis for having the Labour Court proceedings repeated or revived in the Authority over 20 years later. Despite that advice Mr Fifield has reapplied to the Authority.

[4] In its decision the Court of Appeal referred to the history of the proceedings; see *Fifield v Rotorua District Council & Anor* [2007] NZCA 36. Following Mr Fifield's dismissal in or about 1989 the Labour Court heard and upheld a claim that the dismissal was unjustified. When the parties were unable to resolve the issue of remedies the Court in a subsequent decision ordered Mr Field's reinstatement and payment by the Council to him of lost wages and compensation.

[5] Although Mr Fifield returned to his employment, shortly afterwards it again ended. The Court of Appeal said it was unsure why that had happened. Mr Fifield sought a "rehearing" of his original personal grievance but this was declined by the Labour Court. Instead of challenging the second termination he sought to reopen the original claim and when that was declined he applied, several years later and well out of time, to the Court of Appeal.

[6] The Court in its judgment held that there was nothing for Mr Fifield to appeal, as the relief sought by him had been obtained from the Labour Court. The Court of Appeal considered that he was seeking a "review" of the order reinstating him and that was a matter over which it had no jurisdiction. The Court held:

[10] *Even if the manifest difficulties in Mr Fifield's way could have been overcome, an application for special leave has to be made in a timely way. An application made over a decade and a half after the events complained of is hopelessly out of time. It is difficult to conceive of any circumstances in which a delay of that magnitude could be entertained by this Court.*

[7] It is clear from the first Labour Court decision – *Fifield v Rotorua District Council and NZ Labourers, etc. IUOW* [1989] 2 NZILR 100 - that leading up to the dismissal there had been a dispute between Mr Fifield and his employer as to whether he had produced a medical certificate for being absent on some occasions. This is referred to in his latest application where Mr Fifield states that the facts giving rise to his problem include, "*would not accept doctor's certificate*". In another application

his statement is slightly different; “*Mr Ray Kearns would not accept doctor’s certificate*”.

[8] It is clear from this that Mr Fifield wishes to challenge or challenge again his dismissal even although it was held long ago to have been unjustified and equally long ago he was reinstated to his employment as a result. In his latest application no claim is apparent in relation to the reason why shortly after that reinstatement his employment ended for a second time. The Authority is left as equally uncertain about that as the Court of Appeal found itself in 2007.

[9] Having been litigated all the way to the Court of Appeal by Mr Fifield, this matter, the Authority must find, has been finally resolved and there is no basis for an investigation even if the Authority has jurisdiction in relation to a dismissal that occurred in 1989 when the relevant legislation was the Labour Relations Act 1987.

[10] Mr Fifield’s claim against Mr Kearns, the Rotorua City Council or the Rotorua District Council has no prospect of success and on that basis may be dismissed as frivolous and vexatious.

Determination

[11] As it is empowered to do by clause 12A of Schedule 2 of the Employment Relations Act 2000, the Authority dismisses this proceeding.

A Dumbleton
Member of the Employment Relations Authority