

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Lee Garrick (Applicant)
AND Treetops Limited (Respondent)
REPRESENTATIVES Julie Hardaker, Counsel for Applicant
Justine Foden, Counsel for Respondent
MEMBER OF AUTHORITY Y S Oldfield
CONSIDERATION OF PAPERS 17 October 2005
DATE OF DETERMINATION 17 October 2005

DETERMINATION OF THE AUTHORITY

Authority Investigation and Determination

- [1] In July of this year Mr Garrick (who was at that stage unrepresented) wrote to the Authority seeking to lodge an employment relationship problem. It was not clear from his statement just what the nature of the problem was nor what relief he sought, and this was communicated to Mr Garrick by an officer of the Authority. In due course Mr Garrick obtained legal representation and through his solicitor, lodged an amended statement of problem, to which Treetops Ltd responded with an amended statement in reply.
- [2] The amended statement of problem sets out very clearly what the matter is about and I thank Counsel for clarifying the issues for me as she has done. However, it does not in my view describe a problem which is within the jurisdiction of this Authority to resolve, even if the facts as alleged by the applicant are proven (which appears likely since the Reply does not dispute those facts.)
- [3] **There is therefore nothing more that I can do in relation to the matters that the applicant wishes to have resolved.** I now set out my reasons for coming to this conclusion below.

Employment Relationship Problem

- [4] Mr Garrick asserts that the respondent has breached a term of a mediated settlement. He seeks an order for compliance, an order for penalty and an order for costs. He alleges that the respondent has breached clause 5 of the Record of Settlement which states: "*The parties will not speak ill of each other.*"
- [5] The background to this allegation is as follows. In addition to the employment relationship problem which was mediated by the Labour Department Mediation Service the parties were also

involved in another dispute. Mr Garrick lodged this with the Disputes Tribunal. A hearing and decision followed but Mr Garrick was not successful. He says that the respondent was represented at the hearing by its director, John Sax, who made a submission himself and brought two other witnesses along to give evidence on behalf of the respondent.

- [6] Mr Garrick says that at this hearing Mr Sax and the respondent witnesses gave the following evidence about him:

“In my inquiries I found Mr Garrick quite deceitful and dishonest in his statements regularly changing his story, or shifting position to attempt to cover his tracks...” (John Sax)

“It is my feeling that Mr Garrick was dishonest and devious” (Hendrik Wassenaar)

“Again it is my belief that this was a fabrication as it was very clearly explained and understood by Mr Garrick that this contract was for a fixed term only.

I believe this again simply reflects in my professional view that neither Mr Garrick’s verbal or written word is worth very much.” (Scott Brown.)

- [7] Mr Garrick’s says that presenting such evidence to the Disputes Tribunal amounted to “speaking ill” of him and was in breach of clause 5 of the mediated terms of settlement.

- [8] In its Statement in Reply to the Authority the respondent says that the statements made before the Disputes Tribunal were not in breach of the Record of Settlement. It says that at the time the mediated settlement was recorded on 2 October 2003, both parties were aware of the nature and extent of the dispute which was ultimately concluded by the Disputes Tribunal. The Record of Settlement provided that:

“The parties agree that there is a debt issue relating to contract work carried out by the employee that is outstanding between them. This settlement does not settle that debt issue and the parties agree that the debt issue is not an employment related matter and agree that if necessary that it can be pursued through the Disputes Tribunal or similar.”

- [9] The respondent says therefore that it was not the parties’ intention to prevent the matter being litigated. The respondent also says that both parties knew about the matter in dispute and knew that credibility was an issue.

Conclusions

- [10] It is common ground that the mediated terms of settlement permitted Mr Garrick to pursue a separate cause of action against the respondent in the Disputes Tribunal, and that he elected to do so. The respondent is entitled to defend itself in those proceedings.

- [11] Witnesses before the Disputes Tribunal give evidence on oath before a judicial officer. The conduct of proceedings before that Tribunal (or any other) is not a matter in which the Employment Relations Authority can involve itself. The management of such proceedings is a matter for the judicial officer presiding.

- [12] S.160 of the Employment Relations Act 2000 provides that the Authority has jurisdiction over employment relations problems generally. What evidence may or may not be taken by the Disputes Tribunal is not an employment relationship problem. It is not therefore a matter over

which the Employment Relations Authority has jurisdiction. I can do nothing more to assist with this matter.

Costs

[13] I leave it to the parties to discuss this issue between themselves but note that any submission as to costs should be made within 28 days of the date of this determination.

Y S Oldfield
Member of Employment Relations Authority