

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Kevin Hayward (Applicant)
AND Flat Bush Supermarket (New Zealand) Limited (Respondent)
REPRESENTATIVES John O'Shea for Applicant
Zaheda Ali for Respondent
MEMBER OF AUTHORITY Leon Robinson
INVESTIGATION MEETING 18 May 2005
DATE OF DETERMINATION 18 May 2005

PRELIMINARY DETERMINATION OF THE AUTHORITY

[1] The Authority had set down an Investigation Meeting in this matter today. The assigned member Janet Scott was not able to deal with the Meeting because of other priority investigations. I have now been assigned to continue the investigation of the employment relationship problem between these parties.

[2] The Authority had, after a telephone conference, issued timetabling directions to these parties and the matter was set down for an Investigation Meeting to commence at 10.00 am today. The applicants' witness statements and any relevant documents that had not already been provided were to be lodged in the Authority and served on the other party by 4.00 pm on 6 May 2005.

[3] The Respondents' witness statements and any relevant documents not already provided were to be lodged and served on the other party by 4.00 pm on 13 May 2005. It was also the case that inspection and discovery were to be resolved by 4 May 2005.

[4] I am told by counsel this morning that inspection by the respondent was provided to the applicant on 17 May 2005, and that inspection from the applicant to the respondent was provided on the 13 May 2005.

[5] The applicant's brief of evidence was lodged in the Authority shortly before 5.00 pm yesterday - the day before today's meeting.

[6] The respondent employer has not lodged its witness statements or served them on the applicant.

[7] It is obvious that there has been no compliance whatsoever with the Authority's directions as set out in the Authority's advice dated 28 April 2005. I have signalled to the parties this morning that the non-compliance will ultimately sound in costs.

[8] Ms Ali attends today to seek an adjournment of the meeting. She and a witness for the respondent arrived at the investigation meeting at 10.30 am.

[9] Mr O'Shea asks that the Meeting proceed and says that the applicant is in a position to proceed.

[10] Ms Ali resists and says that the respondent employer having only just received the applicant's witness statement this morning, has not been in position to lodge its witness statements or indeed prepare for the scheduled investigation meeting today.

[11] Mr O'Shea also suggests that the matter should not be part heard. He says so because there are important issues of credibility as the parties are diametrically opposed.

[12] Taking into consideration the submissions of counsel and also the statutory objectives that parties are accorded rights of natural justice so that they are able to properly prepare for a Meeting and to meet the claims against them, I have decided that the Investigation Meeting today is best adjourned.

[13] I therefore grant Ms Ali's application for an adjournment. The adjournment shall be a short one and the Meeting today shall adjourn to be recommenced on **Thursday 26 May 2005 at 10.00 am**.

[14] The respondent is to provide all its witness statements of all witnesses it proposes to have attend the rescheduled investigation meeting by **12.00 pm on Wednesday 25 May 2005**. Those statements are to be lodged and served on the applicant's solicitors.

Leon Robinson
Member of Employment Relations Authority