

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2011] NZERA Auckland 253  
5319822**

BETWEEN                      JOHAN HEYNEKE &  
   BRENNAN PEREIRA  
   Applicants

AND                              AIR NEW ZEALAND LIMITED  
   Respondent

Member of Authority:        Eleanor Robinson

Representatives:            Eska Hartdegen, Counsel for Applicant  
   Kevin Thompson, Counsel for Respondent

Investigation Meeting:      19 & 20 April 2011 at Auckland

Submissions received:      20 April 2011

Determination:              13 June 2011

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**DETERMINATION OF THE AUTHORITY ON A PRELIMINARY ISSUE**

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**Issue**

[1]     The Applicants, Mr Johan Heyneke and Mr Brennan Pereira, claim that the Respondent, Air New Zealand Limited (“ANZL”), breached the good faith obligations as set out in s 4 of the Employment Relations Act 2000 (“the Act”).

[2]     Mr Heyneke and Mr Pereira also claim that ANZL through misleading conduct breached s 12 of the Fair Trading Act 1986.

[3]     Mr Heyneke and Mr Pereira further claim that ANZL induced them to enter into contractual relations by misrepresentation thereby giving rise to an entitlement to damages under the Contractual Remedies Act 1979.

[4]     Mr Heyneke and Mr Pereira claim that these breaches and the misrepresentation arose from the actions and the verbal statements made by ANZL during the interviews and meetings conducted during recruitment processes carried out by ANZL in South Africa during July and November 2007. Specifically Mr Heyneke and Mr Pereira claim that the misrepresentation

was made to them that the staff travel privileges which would be available to them as employees of ANZL would be the same or at a similar level as those which were available to them as employees at South African Airways (“SAA”)

[5] ANZL deny that there were clear and unambiguous misrepresentations of the nature alleged in respect of the staff travel privileges at ANZL.

[6] ANZL also assert that the Authority does not have jurisdiction to hear the Applicants good faith obligations claims on the basis that neither Mr Heyneke or Mr Pereira were employees as defined in s 6(1)(b)(ii) of the Act as a *”person intending to work”* at the relevant times.

[7] ANZL further claim that fundamental jurisdictional issues also arise in relation to the claims under the Fair Trading Act 1986 and the Contractual Remedies Act 1979 in that the alleged misrepresentations were made outside New Zealand and that neither of these Acts have extraterritorial reach.

### **Preliminary Note**

[8] The Statement of Problem originally filed with the Authority included claims for alleged misrepresentations in respect of residency applications, the standard of living which could be achieved in New Zealand, and latterly a further claim that, in the case of Mr Heyneke, he was told he would be in the ‘top 10% of salaries earned in New Zealand’.

[9] However these claims were subsequently discontinued, leaving the discounted staff travel issue as the remaining alleged misrepresentation claim. This determination is concerned only with that claim.

### **Issues**

[10] The issues for determination are:

- (i) Did ANZL make clear and unambiguous misrepresentations to Mr Heyneke and Mr Pereira during the South African recruitment processes in 2007 in relation to staff travel privileges?

- (ii) Did ANZL breach the good faith obligations as set out in s 4 of the Act in respect of the alleged misrepresentations?
- (iii) Did ANZL breach s 12 of the Fair Trading Act 1986 by ANZL in respect of the alleged misrepresentations?
- (iv) Did ANZL breach of the Contractual Remedies Act 1979 in respect of the alleged misrepresentations?
- (v) Does the Authority have the jurisdiction to determine the claims brought by the Applicants?

### **Background Facts**

[11] In 2007, ANZL, requiring aircraft engineers to resource business growth, undertook recruitment exercises in South Africa with the objective of recruiting qualified engineers to take up employment with ANZL in New Zealand.

#### *Recruitment Teams*

[12] There were two recruitment trips to South Africa, one in July 2007 and the other in November 2007. There were four members of ANZL on each trip, these being divided into two teams of two, the role of one team being to assess technical expertise and suitability, and the role of the other team being to address the HR and administrative aspects of the recruitment process.

[13] The technical team members of the July recruitment exercise were Mr Murray Lockhart, at that time Aircraft Maintenance Manager in the aircraft hangars at Auckland International Airport, and Mr Dale Hyrve, Line Process and Performance Manager. The HR team members were Ms Tamara Smith, Manpower Officer for Aircraft Maintenance in the Engineering Services Division, and Mr David Houghton, at that time a recruiter in the HR section for the Engineering Services Division (“Tech Ops”).

[14] Mr Lockhart and Ms Smith also took part in the November 2007 recruitment exercise, but Mr Hyrve had been replaced by Mr Terry McCarthy for the technical team, and Mr Houghton by Ms Samantha Mudaly for the HR team.

[15] Mr Lockhart explained that Ms Smith had been particularly selected as part of the HR team as she had experienced the process which the applicants would need to undertake should

they be offered, and accepted, a position with ANZL. Ms Smith, whose husband had been previously employed by SAA before accepting employment with ANZL, had relocated from South Africa to New Zealand in 2004 and had therefore experienced the immigration process personally.

[16] Ms Smith explained that for her and her husband, decisive factors in making the move to New Zealand had been concerns about escalating serious violence and the job insecurity in South Africa arising from the South African Government's affirmative action policy. Mr and Ms Smith had carried out extensive research via the internet and other sources whilst still in South Africa, and prior to making the final decision to relocate, they had visited New Zealand on a 4 day trip to examine at first hand the situation and environment to which they would be moving.

[17] Ms Smith stated that, as a result of her own experiences, she believed that during the interviews she created with the applicants an overly negative, although realistic, picture of what the move to New Zealand would entail, stressing the hardships which would flow from leaving behind family and friends, the cultural differences between South Africa and New Zealand, and the problems posed by geographical separation.

[18] Ms Smith's assertion of the realistic picture she painted for the applicants is supported by the evidence of Mr Shaun de Plessis. Mr du Plessis, who commenced employment with ANZL in Tech Ops on 1 February 2008, was recruited during the July 2010 recruitment process. Mr du Plessis had been interviewed by Ms Smith and said that she had informed him that he would find the standard of living expensive in New Zealand, and she had described the difficulties she encountered when she had moved to New Zealand.

[19] Ms Smith said that she remembered interviewing Mr Heyneke in July 2010. Ms Smith did not recall Mr Heyneke asking her about discounted staff travel, but that had he or any other applicant done so, she would have immediately responded that the staff travel privileges at ANZL were not the same, or even at a similar level, to those offered by SAA since she had personal experience of both. This evidence is supported by that of Mr Plessis who said that when the topic of staff travel arose during his interview, Ms Smith had told him that the ANZL staff travel privileges were much less generous than those of SAA and that he would find it hard to get home utilising staff travel provided by ANZL.

[20] Ms Mudaly, who was part of the November 2010 recruitment exercise, but who did not take part in the July 2007 recruitment exercise, had lived in South Africa for 10 years prior to her moving to New Zealand to work for ANZL, including living and working in

Johannesburg. Like Ms Smith, she also had first-hand experience of the South African Government's affirmative action policy, and knowledge of the potential complications of the immigration process, experience which she brought to the interviewing process.

*Recruitment Process*

[21] Both the July and the November 2007 recruitment exercises were carried out at Caesars Palace Hotel in Johannesburg. The interviews were carried out in one large room at the hotel, with the technical and HR interviews taking place at separate tables. Ms Smith said that on both recruitment exercises the same forms were used, the same topics covered and the same information was provided.

[22] The structure for the interviews was the same for both exercises:

- Allocated time slots of 90 minutes, during which 2 candidates would be interviewed;
- Completion of administration forms and an ACER test, and a photograph taken, taking approximately 15 minutes;
- A technical interview lasting approximately 30/40 minutes;
- An HR/ administration interview lasting approximately 30/40 minutes.

[23] During the process the two candidates alternated, while one was being interviewed by the technical team, the other was being interviewed by the HR/administration team.

[24] Mr Heyneke was interviewed during the July 2007 recruitment exercise and Mr Pereira was interviewed during the November 2007 recruitment exercise.

*Misrepresentations: Mr Heyneke*

[25] Mr Heyneke said that during the technical part of his interview in July 2007, he had asked Mr Lockhart about staff travel and that Mr Lockhart had told him in reply that he would receive discounted staff travel with ANZL. Mr Heyneke stated that he had specifically asked what the airfare to New Zealand from South Africa might cost.

[26] Mr Heyneke said that in response to that question, Mr Lockhart had first asked him the cost of travelling to New Zealand on SAA. Mr Heyneke said he had informed Mr

Lockhart that he and his girlfriend had recently flown to the USA for which they had paid R400. Mr Heyneke said he had then commented that a return air ticket from New Zealand to South Africa using SAA he believed would cost a similar amount of approximately R400 (approximately NZ\$70).

[27] Mr Heyneke said Mr Lockhart had replied that the cost of booking through ANZL would be not as low as that available with SAA, but that it would not cost much more. The reason he gave for this was that as ANZL, although a Star Alliance Partner, did not fly to South Africa, Mr Heyneke would have to fly on an airline operated by another Star Alliance Partner.

[28] In contradiction of Mr Heyneke's evidence, Mr Lockhart explained that he did not divert from his brief during the interviews, the interviews were run to a tight time schedule, and not only was there little time for social conversation, but that he had directed that any applicants who raised questions other than of a technical nature, which would include staff travel privileges, should address these questions in the part of their interview with the HR team.

[29] Ms Smith and Mr Houghton, while not listening in to any of the technical interviews as such, stated that they were nonetheless able to overhear snippets of conversations from time to time. Both Ms Smith and Mr Houghton confirmed that they had on occasion heard Mr Lockhart telling an applicant to address a question to the HR team in the HR part of the interview.

[30] Mr Lockhart said in evidence that he did not tell any candidate that they would be given 'discounted staff travel'; this would have been outside his remit which was to conduct the technical interview process.

[31] Mr Lockhart stated that he had no recollection of any discussion with Mr Heyneke regarding the value of discounted travel from South Africa to New Zealand, and further that although he had no knowledge of what a staff travel ticket from South Africa to New Zealand would cost a SAA employee, he would have remembered Mr Heyneke telling him it would cost approximately R400 (NZ\$70), as this would have been a remarkably low price.

[32] Mr Lockhart explained that he had provided information during the interviews on the new Boeing -787 as the future aircraft fleet configurations were relevant to Tech Ops. Any advice given was to the effect that ANZL had ordered the Boeing -787 aircraft and that, in the

future this aircraft would form an important part of ANZL's fleet configuration and therefore, of the work of Tech Ops.

[33] Mr Lockhart did confirm that they had discussed Mr Heyneke's hobby of collecting motorbikes. Mr Lockhart said that the questions about the applicants' hobbies were a way of gauging their mechanical aptitude, and he did recall some conversation about Mr Heyneke's interest in motorbikes.

[34] Mr Hyrve, who was part of the technical team on the first trip, interviewed Mr Heyneke with Mr Lockhart. Mr Hyrve also recollected the conversation about the motorbike interest of Mr Heyneke, but was firm in his recollection that the question of staff travel had not arisen. Further Mr Hyrve stated that if such a question had been asked, it would have been referred to the HR team.

[35] Mr Heyneke stated that following the interview in July 2007, he had been requested to attend a meeting with Ms Mudaly to complete some paperwork. Mr Heyneke thought he had seen Ms Mudaly on the occasion of the July 2007 visit, however since Ms Mudaly was not part of the first recruitment team, the interview with her could only have taken place in November 2007. Ms Mudaly's evidence confirms that she did hold impromptu interviews during her November 2010 visit with some eight applicants from the July 2010 recruitment exercise during her November visit. However she could not confirm that Mr Heyneke was one of the attendees, stating that she could remember the meeting quite well but not the attendees.

[36] Mr Heyneke said he and Ms Mudaly had spoken further on the subject of staff travel, and that she had told him there was a 'buddy' scheme which would enable family and friends from South Africa to visit him in New Zealand. Ms Mudaly denies having any specific conversation with Mr Heyneke, or that any specific questions were raised on the subject of staff travel by any attendee.

[37] Ms Mudaly explained to the Investigation Meeting that the HR team role in the interviewing processes, which were held during the November 2010 and the July 2010 recruitment exercises, was to:

- (i) investigate behavioural type issues;
- (ii) assess how an applicant would adapt to life in New Zealand;

- (iii) assess the level of commitment the applicant had to the process;
- (iv) assess the level of understanding held by the applicants about what the process involved; and
- (v) to ascertain how the applicant would fit within the ANZL business culture.

[38] Ms Mudaly said that the HR team also provided information about the employment conditions with ANZL, including salary scales, opportunities for promotion and such benefits as superannuation and access to the ANZL Staff Travel Scheme.

[39] Ms Mudaly stated she had in her interviews explained the staff travel privileges by reference to a copy of the ANZL Staff Travel document, and in particular covered the following points:

- the staff travel privileges were not available until the employee had completed 6 months service;
- employees could have one nominee for staff travel and then either the dependent package (for employees with children), or
- alternatively the ‘buddy’ scheme under which employees could use travel privileges with up to approximately 4 buddy trips a year;
- if a ‘buddy’ scheme was used, the employee would have to travel one way with the buddy, and this would be the longest part of the journey;
- Staff travel tickets were subload tickets which meant that a seat was not guaranteed, although after 5 years’ service some non-subload travel was available
- ANZL staff travel privileges were only available on the ANZL network of services.

[40] Ms Mudaly said that she had no recollection of having any meeting with Mr Heyneke, although she did recall having an impromptu meeting with approximately eight applicants who had been interviewed in the first recruitment exercise in July 2007. This meeting was used as an opportunity for the applicants to ask any additional questions. Ms Mudaly said that there may have been questions on the topic of discounted staff travel,

although she did not recall any. However if these had arisen Ms Mudaly was adamant that she would only have provided the information as outlined above.

[41] Ms Mudaly stated that her lasting impression of the impromptu meetings was that the main concerns raised by the applicants had been whether New Zealand was a safe place to live, and whether there was any form of affirmative action policy in place.

[42] Mr Heyneke said after the July 2007 interview, he had gone home and explained to his girlfriend, Ms Ans-Marie Englebrecht what he had been told at the interviews. Ms Englebrecht said in evidence that Mr Heyneke informed her he had been told that staff travel was available on Star Alliance partners and that there was a 'buddy' scheme, although it appears that the information about the 'buddy' scheme may have only been made known to Ms Englebrecht in November 2007. Mr Heyneke had assured her that the international travel costs when he was employed at ANZL would only be slightly more expensive than they had been with SAA.

[43] After Mr Heyneke commenced employment with ANZL on 29 January 2008 he had access to the ANZL Intranet on which details of the ANZL Staff Travel Policy were available. He explained that because discounted staff travel was extremely important to him, he had at that time accessed the Intranet to obtain details of the discounted staff travel to South Africa and discovered that the ANZL staff travel privileges were not as he had expected them to be.

[44] Mr Heyneke said that it came as a great shock to him to discover, after he and Ms Englebrecht had moved to New Zealand, that the staff travel discount they understood would be available in line with the representations made by Mr Lockhart and Ms Mudaly in South Africa, were not in fact available.

*Misrepresentations: Mr Pereira*

[45] Mr Pereira was interviewed as part of the recruitment exercise undertaken in November 2007. Mr Pereira said that during the HR part of the recruitment exercise process, he had asked Ms Mudaly about staff travel and in particular about travel from New Zealand to South Africa. Mr Pereira said that Ms Mudaly had told him that air travel to South Africa would present no problems as, although ANZL did not fly there, flights would be available on a Star Alliance partner.

[46] Mr Pereira said he and his wife had flown from South Africa to Thailand on their honeymoon in 2006, the cost of this on SAA utilising the SAA staff travel privileges had been approximately between R400 and R600 (approximately NZ\$70 to NZ\$100). Therefore, on

the basis of what he had been told by Ms Mudaly, Mr Pereira held the expectation that it would be a similar cost to fly to South Africa from New Zealand.

[47] Ms Mudaly did recall the interview with Mr Pereira, but denied that she had told him that he would be able to travel to South Africa using his Air New Zealand staff travel privileges, or that the cost of travelling to South Africa would be approximately NZ\$70 to NZ\$100.

[48] Ms Mudaly said that sometimes she was asked a question about flying to and from South Africa, and that her invariable response to the question was to explain that once an employee qualified for staff travel privileges, they could use those privileges to fly to destinations on the ANZL network, such as Perth or Sydney, but that from those destinations another carrier would need to be used as ANZL did not fly to South Africa.

[49] On 1 June 2010 Mr Pereira's father-in-law had passed away. Mr Pereira explained that he had accompanied Mr John Hugo, Union Delegate, to the ANZL HR department, with the intention of organising flights to and from South Africa.

[50] Mr Pereira said it was at this stage that he became aware that the discounted travel he had expected from his discussion with Ms Mudaly was not available, the travel cost which the HR department was able to arrange for him and his wife being only marginally less than the full fare cost which could be purchased at a travel agent, and moreover that it would be on a 'stand-by' basis.

## **Determination**

### **The Misrepresentations**

#### *Mr Heyneke*

[51] Mr Heyneke described the availability of discounted staff travel as being 'pivotal' in his decision to accept employment with ANZL. Mr Heyneke produced in evidence a copy of a note which he said he had made in July 2007. The note consists of a list of headings, and includes "*Huis foc*" meaning 'travel home'; however there are no notes against this heading, or against any other heading on the list. However, at the Investigation Meeting, when asked by Mr Thompson, Counsel for ANZL, whether he had told ANZL and/or Mr Lockhart, that discounted staff travel was pivotal to his decision to join ANZL, Mr Heyneke replied "No".

[52] Ms Smith gave evidence that she had given her contact details to all the applicants, and advised them that if they had any queries, or if there were matters on which they sought clarification, they should contact her. Given the stated level of importance Mr Heyneke said he, and also Ms Englebrecht who explained it was of prime importance to her, placed on the issue of discounted staff travel, I find it surprising that Mr Heyneke did not contact either Ms Smith, or Ms Mudaly, at any time following the interviews to have confirmed in writing what had apparently been represented to him concerning staff travel privileges and how they related to travel to and from South Africa.

[53] I consider this to be significant in light of the fact that no offer of employment was made to Mr Heyneke at the time of the recruitment process in South Africa. It was in fact not until following the return of the ANZL personnel to New Zealand, and whilst he was still living and working in South Africa that Mr Heyneke was provided with a copy of his Individual Employment Agreement (“the Agreement”). Mr Heyneke said that he had read and understood the Agreement and had sufficient time to obtain legal advice on the contents before signing it.

[54] The Agreements contains a completeness clause stating:

*This agreement and any attachments constitute the entire agreement between you and the Company and supersede all previous misrepresentations, negotiations, commitments, and communications, either written or oral, between you and the Company.*

[55] In light of this clause, I find it even more surprising that, prior to signing the Agreement, Mr Heyneke took no steps to ascertain from Ms Smith, Ms Mudaly or Mr Lockhart himself, given that this issue was ‘pivotal’ in his decision-making process, that the facts surrounding ANZL discounted staff travel were as he understood them to be.

[56] Given the reference in the clause to the Agreement superseding “*all previous misrepresentations, negotiations, commitments, and communications*” I would have expected, if not warning bells, at the very least an attempt to be made by Mr Heyneke to establish the exact situation in respect of the staff travel privileges.

[57] An email sent by Mr Heyneke to Mr George Ryde, National Secretary for the Aviation and Marine Engineers Association Union, dated 2 February 2010 is helpful in clarifying Mr Heyneke’s understanding of what had been said during the interview processes:

*I Johan Heyneke was interviewed in South Africa at Caesars Palace, Kempton Park, on the 26<sup>th</sup> June 2007. The two Air New Zealand representatives that interviewed me was Murray Lockhart and ... Samantha Mudaly handled most of the paperwork and Tammy Smith was present and David Houghton.*

*I asked quite a few questions on the interview that i felt was very important so that I would be able to make the best decision for me and my family. One of the most important questions was the one involving staff travel. It would be very obvious that I would like to see my family at least once a year or how ever time permits. Murray Lockhart stated that Air New Zealand does not fly to South Africa so we would be unable to use our staff travel privileges on Air New Zealand flights to South Africa. He said that Air New Zealand will be looking at the South African route in 2010 with the new Boeing 787. Seeing that I would be unable to use Air New Zealand to visit my family I asked if Air New Zealand was part of the Star Alliance group to which Mr Lockhart answered yes.*

*Working at South African Airways at the time as an employee you qualified for discount on any of the Star Alliance members. Mr Lockhart failed to mention that it would be of no use to us seeing that we are unable to use any privileges on Star Alliance. I felt that was very deceiving as he obviously knew why the question was asked.*

[58] Setting aside at this point the fact that Mr Lockhart denies that he had any conversation with Mr Heyneke about staff travel, it would appear from this email that Mr Heyneke had made assumptions based on information which had been given to him at some stage in the interview process.

[59] Mr Heyneke's allegation of misrepresentation by Mr Lockhart is contradicted by the evidence of Mr Hyrve, Ms Smith and Mr Houghton which supports Mr Lockhart's evidence that he did not discuss staff travel privileges with Mr Heyneke.

[60] As far as the misrepresentation alleged to have been made by Ms Mudaly, Mr Heyneke alleged only that she told him there was a 'buddy' scheme, and he acknowledged when questioned at the Investigation Meeting that Ms Mudaly had made no statements about the cost of travel. I consider therefore that any view Mr Heyneke formed of what the 'buddy' scheme entailed was therefore based on his own assumptions from his experience at SAA.

*Mr Pereira*

[61] Mr Pereira also described the discounted staff travel issue as being 'pivotal' to him, and stated that he had been interviewed by Mr Lockhart on technical issues, but made no claim that discounted staff travel was discussed with Mr Lockhart.

[62] Mr Pereira said that Ms Mudaly had interviewed him on HR matters and told him that although ANZL did not fly to South Africa, he would be able to fly there by using a Star Alliance partner. Mr Pereira agreed that what Ms Mudaly had told him was truthful.

[63] Mr Pereira stated that his expectation as to the low cost of flights from New Zealand to South Africa was founded on an assumption he had made, based on the costs of flights he had enjoyed whilst employed by SAA, and the statement made by Ms Mudaly that ANZL was a member of the Star Alliance. Mr Pereira did not allege that Ms Mudaly said or inferred that ANZL membership of the Star Alliance would give him access to the same staff travel privileges as other airlines.

[64] Mr Pereira had no supporting documentation for alleging that Ms Mudaly had misrepresented the situation, he also did not contact any of the recruitment team members following his interview to establish the details of the discounted staff travel, and he also signed the Agreement containing the completeness clause without making any further enquiries.

#### *Summary*

[65] Based on the weight of compelling evidence as presented, I conclude that it is more likely than not that there were no misrepresentations made to either Mr Heyneke or Mr Pereira concerning the details of the ANZL discounted staff travel scheme. I find that such information as was provided by Ms Smith in July 2007 and by Ms Mudaly in November 2007 to Mr Heyneke concerning ANZL staff travel privileges was factual and truthful.

[66] In the case of Mr Pereira, his allegation of misrepresentation by Ms Mudaly appears to be merely an assumption that he made based on his own experiences whilst employed by SAA and the truthful information provided by Ms Mudaly.

[67] I conclude that, while Mr Heyneke and Mr Pereira may have genuinely held a view that ANZL provided the same level of generous staff travel discounts as those provided by SAA, this view was a result of the assumptions they made and was not reasonable, given that I have not found evidence that supports the contention that Mr Lockhart or Ms Mudaly made the alleged misrepresentations.

#### **Breach of Good Faith Obligations**

[68] As I have not found that the alleged misrepresentations were made, the claim of breach of good faith must also fail.

[69] However I do note that since being made aware of the level of concern, primarily by representation of Mr Heyneke, about the cost of travel to South Africa by all the South African employees, ANZL have demonstrated good faith by being active and constructive in employment relationships as defined in s 4(2) of the Act.

[70] In this respect I observe that ANZL has been in negotiations with SAA for some time, attempting to come to an agreement about discounted staff travel for ANZL employees on SAA airlines. Ms Whittle, an experienced Staff Travel Specialist for ANZL, first informed Mr Heyneke of this situation in June 2009, and I find that there has been ongoing information provided on the progress of negotiations since that time to Mr Heyneke and his South African colleagues.

[71] The evidence of Ms Whittle, which I accept, is that any stumbling block to an agreement being reached is attributable on the part of SAA and not ANZL, who have attempted to progress that matter to a successful outcome.

[72] Far from finding a breach of good faith, I find that ANZL has acted as a fair and reasonable employer would act once being made aware of a concern of their employees.

### **Breach of s 12 of the Fair Trading Act 1986, Breach of the Contractual Remedies Act 1979**

[73] As I have not found there to have been misrepresentations, I do not need to determine Mr Heyneke's and Mr Pereira's claims under the Fair Trading Act 1986 and the Contractual Remedies Act 1979.

[74] However, for the sake of completeness, I observe that, pursuant to s 43 (5) of the Fair Trading Act 1986, claims must be brought within a period of 3 years. As neither Mr Heyneke nor Mr Pereira brought a claim within the 3 year period, their claims under this legislation would be time barred.

### **Jurisdiction**

[75] As a consequence of the above findings, the issue of whether the Authority had the jurisdiction to address the claims under the Fair Trading Act 1986 and the Contractual Remedies Act 1979 does not need to be addressed.

[76] In conclusion Mr Heyneke's and Mr Pereira's claims are dismissed and I am unable to assist them further

**Costs**

[75] Costs are reserved. The parties are encouraged to agree costs between themselves. If they are not able to do so, the Respondent may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Applicant will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**