

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2023] NZERA 781
3232419

BETWEEN KOH I-LYN
Applicant

AND PRICEWATERHOUSECOOPERS
Respondent

Member of Authority: Sarah Blick

Representatives: Applicant in person
Tim Clarke, counsel for the Respondent

Investigation Meeting: On the papers

Determination: 22 December 2023

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Koh I-Lyn was employed by PricewaterhouseCoopers (PwC) in early 2019. PwC says an employment relationship problem arose in or around May and June 2020 resulting in Ms Lyn's dismissal, after which she sought to be re-employed. On 16 July 2020, the parties entered into a written settlement agreement to resolve their employment relationship problem, which contained a full and final release settlement clause.

[2] Ms Koh is seeking to pursue a personal grievance against PwC. She is also claiming other employers fear employing her because of PwC's actions in damaging her reputation, and she has been unable to find another job since.

[3] PwC says as a result of the settlement agreement, Ms Koh is not entitled to bring a personal grievance claim against PwC. It says the application should be dismissed, and Ms Koh is not entitled to any of the remedies claimed.

The Authority's process

[4] By consent from the parties, the Authority determines this preliminary question on the papers. Information outlined in the statement of problem, statement in reply, other information received from Ms Koh, and in the form of an affidavit from PwC's General Counsel Stewart McCulloch.

The issue

[5] The agreed preliminary issue for investigation and determination was as follows:

Was the written agreement signed by the parties in June 2020 reached by accord and satisfaction, in full and final settlement of any claim Ms Koh may have had in relation to her employment, such that she cannot now pursue a personal grievance?

Background

[6] Ms Koh has provided little information around the circumstances of her employment and dismissal, despite having been given the opportunity to do so. The following background is largely based on information provided by PwC.

[7] In 2018 Ms Koh was employed by PwC Malaysia. On 15 November 2018, PwC made a conditional offer of employment for Ms Koh to join PwC as a Senior Associate in the Hamilton Assurance team. The offer was conditional upon Ms Koh's successful application for a work visa, which was granted.

[8] Ms Koh was employed by PwC based in Hamilton from 21 January 2019 until 22 June 2020. Certain aspects of Ms Koh's conduct gave rise to disciplinary allegations, which ultimately resulted in termination of her employment for serious misconduct.

[9] On 16 July 2020, the parties entered into the settlement agreement which contained the following terms:

- (a) The parties agreed the employment relationship had terminated by way of resignation on 22 June 2022;
- (b) PwC would make payment of an ex-gratia settlement sum;

(c) The terms of settlement were in full and final satisfaction of any claim that either party may have against the other, and each party released the other from any further liability to it.

[10] The agreement is signed and in it Ms Koh acknowledged she had been provided with an opportunity to take independent legal advice before signing the agreement.

Discussion

[11] Employment disputes are commonly resolved by means of confidential settlement agreements between the parties which are then sent to be signed and certified by a mediator pursuant to s 149 of the Employment Relations Act 2000 (the Act). In this case this did not occur.

[12] In *Cabletalk Astute Network Services Limited v Cunningham*¹ Judge Shaw set out the definition of accord and satisfaction, defined in the case of *British Russian Gazette and Trade Outlook Ltd v Associated Newspapers Ltd* as²:

Accord and satisfaction is the purchase of a release from an obligation, whether arising under contract or tort, by means of valuable consideration, not being the actual performance of the obligation itself.

[13] Chief Judge Colgan in *Graham v Crestline Pty Limited* explained that whether accord and satisfaction has been made is a question of fact requiring a finding of a meeting of the parties' minds or that one of them must act in such a way as to induce the other to think that money (or other consideration) is taken in satisfaction of the claim.³

[14] In this case, there was a dispute between the parties about Ms Koh's termination of employment. During the disciplinary process, Ms Koh denied that she had engaged in any misconduct, and subsequent to her dismissal sought re-employment by PwC. The parties entered discussions in which valuable consideration was given by the parties, assuming obligations to each other and gave up valuable rights. PwC paid Ms Koh \$4,769.23 (less applicable tax) to which Ms Koh was not contractually entitled. PwC performed this obligation under the settlement agreement.

¹ [2004] 1 ERNZ 506.

² [1933] 2 KB 616, at 643-644.

³ [2006] ERNZ 848.

[15] The terms of settlement provided mutual advantage to both parties. PwC agreed to characterise Ms Koh's dismissal for serious misconduct as a resignation from her employment, paid her an amount to which she was not contractually entitled, released her from any claims, agreed not to disparage her, and provided her with a certificate of service in return. Ms Koh agreed not to disparage PwC and to release PwC from any further liability to her in relation to her employment.

[16] The agreement is signed by the parties in which they accepted the terms in full and final settlement of any claim which either may have against the other in relation to the employment. Ms Koh acknowledged she was provided with an opportunity to take independent legal advice by signing the settlement agreement.

[17] The Authority determines there was accord and satisfaction such that the agreement is binding on the parties. It is clear that the wording of the settlement was intended to settle all claims that either party may have against the other in respect of Ms Koh's employment, including, as is expressly stated in the release, any personal grievance.

Outcome

[18] The parties reached accord and satisfaction and the agreement is binding on them. Ms Koh is unable to pursue a personal grievance claim against PricewaterhouseCoopers.

[19] If Ms Koh is intending to pursue a claim that PricewaterhouseCoopers breached the agreement by making damaging remarks to prospective employers, she will need to advise the Authority of the same.

Costs

[20] Costs are reserved pending contact with the parties in early 2024.

Sarah Blick
Member of the Employment Relations Authority