

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2015] NZERA Wellington 17
5439979

BETWEEN MAHU KARANGAROA
Applicant

MIRIAM TUAPAWA
Applicant

PERA BURTON
Applicant

ARCHIE WAIKAWA
Applicant

KELVIN BROWN
Applicant

AND AFFCO NEW ZEALAND
LIMITED
Respondent

Member of Authority: Michele Ryan

Representatives: Simon Mitchell, Counsel for the Applicants
Rachel Webster, Counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 17 November 2014 and 2 December 2014 for the
respondent
19 November 2014 for the applicants

Determination: 17 February 2015

DETERMINATION OF A PRELIMINARY ISSUE

Employment relationship problem

[1] On 18 November 2013 the applicants lodged a statement of problem claiming wages are owed to each of them by their employer Affco New Zealand Ltd (Affco) pursuant to cl.54(a)(i) of the Affco Core Collective Agreement (11 October 2005 to

31 December 2007). In its statement in reply Affco rejects the substance of the claims set out in the applicants' statement of problem.

[2] The applicants are members of the New Zealand Meat Workers Union (the Union).

[3] There have been subsequent delays to the progress of the applicants' claims.

[4] On 1 September 2014, in an amended statement in reply, Affco asserts that *"The applicants' claims were settled by the Union on their behalf as a part of a global settlement (the "Settlement") reached between the Union and Affco New Zealand Limited on 22 May 2012"*.

[5] During a case management conference call the parties' representatives agreed that the preliminary issue: whether or not the Settlement signed on 22 May 2012 precludes the applicants from pursuing the claims set out in the original statement of problem, should be decided on the papers.

[6] The representatives each provided submissions on the issue and on behalf of Affco, the Chief Executive furnished a sworn affidavit detailing his understanding as to how the Settlement of 22 May 2012 came about.

Relevant information

[7] The material provisions of the Settlement provide the following:

Terms of Settlement between

- A. *Affco New Zealand Ltd (Affco); and*
- B. *The New Zealand Meat Workers and Related Trades Union Incorporated (MWU)*

The parties agree:

- ...
- 4. *The parties agree that this settlement is (subject to ratification of the Core Agreement) a full and final settlement of all grievances and disputes between them and they shall each, upon signing of the Core Agreement, immediately withdraw (on the basis that they been fully and finally settled) all court cases/proceedings, Employment Relations Authority cases/proceedings and/or any other grievances/disputes they have in relation to one another or employment matters generally including, but not limited to those grievances and disputes listed in the attached document. This obligation does not require the withdrawal of those cases/proceedings taken by individuals against Affco on personal*

grievances or wage claims resulting from the decision [the Seniority judgement] of *New Zealand Meat Workers Union of Aotearoa Inc v. AFFCO New Zealand Limited* [2011] NZEmpC 32.

[8] Attached to the back of the Settlement is a document titled “*Grievances and Disputes to be Withdrawn*” which set out a range of matters filed in the Employment Court or lodged with the Authority. Each party undertook to withdraw the legal actions listed, depending on who initiated the action. Included in the list were two matters that the Union agreed it would not file or proceed with further.

[9] The applicants’ claims were not recorded in the “*Grievances and Disputes to be Withdrawn*” document, nor have they arisen as a result of the Seniority judgement.

Analysis and determination

[10] A determination of this application rests on establishing whether the applicants are bound by the terms contained in the Settlement and therefore precluded from progressing their claims. In this respect I am required to assess the contents of the Settlement.

[11] In reliance of principles relevant to the exercise of contractual interpretation¹ Affco urges the Authority to consider extrinsic material that provides context to the circumstances in which the Settlement was agreed.

[12] Affco’s Chief Executive says that the Settlement emerged following a period of industrial action and in the course of bargaining for a collective agreement. He says the intention of clause 4 within the Settlement was to settle all issues of dispute² raised by the MWU on behalf of its members, as well as claims Affco had against union member employees. In support of this proposition Affco refers to the statement “*this settlement...is a full and final settlement of all grievances...*” and to several further references to “*grievances*” throughout clause 4 of the Settlement. Affco says if clause 4 was only intended to settle issues between MWU and AFFCO then the term “*grievances*” would not have been used as there can be no “*grievances*”³ involving the MWU.

¹ As expressed in by the Supreme Court in *Vector Gas v Bay of Plenty Energy Ltd* ¹ [2010] NZSC 5; [2010] NZLR 444

² With the exception of matters flowing from the Seniority judgement

³ As defined by the Employment Relations Act at s.103(1) a personal grievance that an employee may have against an employee’s employer

[13] Interpretation of a contract is assessed against a notional objective standard of a reasonable (but impartial) person with knowledge of the background to the agreement, and what that person would understand the agreement to convey. Extrinsic material may be considered if it clarifies the meaning of a disputed clause used by the parties. However the use of extrinsic material is constrained. If the material establishes the parties agreed to a particular meaning of a word, term or phrase within an agreement then that information is relevant but subjective evidence about what parties individually intended by particular words is not.

[14] Looking firstly at the plain words used in the Settlement, I am unable to identify any words or terms which would objectively lead to a finding that the applicants were parties to the Settlement. The Settlement expressly identifies the parties as being Affco and the Union but no other entities are named as being party to the Terms of Settlement.

[15] My view that the Settlement is an exclusive agreement between Affco and the Union is reinforced by two additional statements in cl.4. The first purports that the settlement is “*full and final settlement of all grievances and disputes between them*”. The second is “*they shall each...withdraw...any...and/or any grievances/disputes they have in relation to one another*.” [my emphasis].

[16] I am not persuaded by Affco’s contention that references to “*grievances*” can be reasonably construed to infer that the Settlement included matters (or parties) external to those between MWU and Affco. Any conclusion of that kind would require crediting a meaning to the “*grievances*” well beyond what I consider a third party could objectively deduce.

[17] An employee’s ability to raise and pursue personal grievance claims⁴ and dispute rights pursuant to a collective agreement⁵, is prescribed in the Employment Relations Act. Employees and employers are able to settle personal grievances and disputes.

[18] But where there is an absence of precise and clear words indicating that the applicants were parties to the Settlement and that they agreed to abandon their claims and forgo their statutory entitlement to access justice, I am unwilling to conclude that

⁴ Section 102

⁵ Section 129

the Settlement prevents the applicants from pursuing their claims as contended by Affco. My findings are consistent with the determination of the Employment Relations Authority in *Webber v Affco New Zealand Ltd*⁶ which I do not understand to have been challenged.

[19] It needs to be noted that a feature of Affco's amended statement of problem is the allegation that the withdrawal of legal action including employees' grievances was agreed by it on the basis of the Union's authority that it was acting on for and with the consent of its members. I have found that the Settlement itself does not reflect that proposition. Whatever was communicated between Affco and the Union prior to agreement and execution of the Settlement is a matter I can make no further comment on.

Determination

[20] For the reasons discussed above I find that the Settlement between Affco and the Union does not bind the applicants to the terms contained within it and they are free to progress their claims with the Authority.

Costs

[21] Costs are reserved.

Michele Ryan
Member of the Employment Relations Authority

⁶ *Webber v Affco New Zealand Ltd* [2014] NZERA Auckland 324