New Zealand Employment Relations Authority Decisions

Milne v Air New Zealand Limited (Auckland) [2012] NZERA 887; [2012] NZERA Auckland 236 (13 July 2012)

Last Updated: 30 April 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2012] NZERA Auckland 236
5381775

BETWEEN KATHLEEN ANN MILNE Applicant

AND AIR NEW ZEALAND LIMITED

Respondent

Member of Authority: R A Monaghan

Representatives: KA Milne in person

G Norton, counsel for respondent

Investigation meeting: On the papers

Determination: 13 July 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In a statement of problem lodged on 16 May 2012 Kathleen Ann Milne alleged that her former employer Air New Zealand Limited (Air New Zealand):

• did not inform her of her rights to an individual employment agreement or to seek advice about an agreement; and

• recruited her from Australia without providing her with 'the balance of the terms of an individual employment agreement,' informing her of her rights to an individual agreement or providing information about

'policy or postings'.

[2] Ms Milne sought an order for payments of her claims to the terms and conditions 'that are available to other staff who are employed by Air New Zealand and who work overseas'.

[3] Because Ms Milne's employment as an Air New Zealand cabin crew member commenced in 1972, and the employment relationship ended in November 2004 in the circumstances set out in a determination of the Authority in *Milne v Air New Zealand Limited1*, it appeared that at relevant times Air New Zealand was not under the obligations alleged. Further, if Air New Zealand was under any of these obligations, the statement of problem was lodged outside applicable limitation periods and the

claim could not continue.

[4] Accordingly Air New Zealand included in its statement in reply a request that the matter be struck out:

• because of a lack of jurisdiction;

• to prevent the pursuit of a frivolous claim; and

• to avoid an abuse of process.

[5] Ms Milne was invited to respond to the request for an order striking out her claim. Her attention was drawn to the particular paragraphs in the statement in reply which were most directly relevant to the request.

[6] In response Ms Milne cited:

- The Inflight Service Directors Collective Employment Agreement dated 2003 – 2005 (the cea), and in particular Clause 1.3 which read:

An Inflight Service Director who at the time of the making of this agreement was employed under the terms of an individual employment agreement may, if the employer and employee agree, become a party to this agreement.

• A document headed 'Changing Roles Policy and Procedures' and dated

11 October 2002, which included terms and conditions for expatriate postings and secondments in countries other than the country of regular employment, and transfers within New Zealand or to countries other

than the country of regular employment.

1 [2011] NZERA Auckland 45

[7] The response clarified certain references in the statement of problem, but did not otherwise address the matters to which her attention had been drawn. In turn, it did not provide a reason why her claims should not be struck out.

[8] This determination addresses whether Ms Milne's claims can proceed.

Determination

[9] During her employment Ms Milne was a party to and bound by a series of collective employment agreements.

[10] Ms Milne's claim is misconceived and cannot succeed because:

a. When she was recruited in 1972 an entirely different statutory regime from the present one was in force, and no statutory or contractual obligations or rights of the kind now being asserted were in existence;

b. No obligation to inform her of any 'right' to an individual employment agreement has come into force since the employment relationship began;

c. Clause 1.3 of the cea does not refer to a right to an individual employment agreement of which she was unaware and should have been made aware, rather it recognises that some individuals who were not parties to the cea could become parties to the cea by operation of that clause;

d. Even if Ms Milne was recruited in Australia the document dated 11

October 2002 setting out the policy and procedures relating to expatriate postings, secondments and transfers was not in force and did not apply to her at the time of her recruitment or subsequently; and

e. Ms Milne has no right to any payment under that document.

[11] If the above is wrong, and there is some arguable ground on which Ms Milne can say that, when she was recruited, she should have been made aware of certain terms and conditions which applied to her, and under which she was entitled to payments she has not received, she cannot in any event commence a claim.

[12] Section 142 of the Employment Relations Act 2000 provides:

No action may be commenced in the Authority or the court in relation to an employment relationship problem that is not a personal grievance more than 6 years after the date on which the cause of action arose.

[13] If any cause of action ever arose in relation to the present employment relationship problem, for the purposes of s 142 it would have had to arise inside the 6- year period ending on 16 May 2012 when the statement of problem was lodged. That is not possible, as Ms Milne's employment had ended over 7 years before the statement of problem was lodged.

[14] Accordingly this claim will not be investigated any further.

R A Monaghan

Member of the Employment Relations Authority

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