

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Jonathan Muncey (Applicant)
AND Redican Allwood Limited (Respondent)
REPRESENTATIVES Jonathan Muncey In Person
Calum Finlayson for the Respondent
MEMBER OF AUTHORITY P R Stapp
TELEPHONE CONFERENCE Wellington, 20 October 2006
DATE OF DETERMINATION 30 October 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This is an employment relationship problem about the recovery of a week's wages related to an injury sustained by Mr Muncey.

The proceedings

[2] These proceedings are somewhat unusual. Previously Mr Muncey brought an employment relationship problem against "Garry Lloyd" (5041307). That matter was referred to the Department of Labour for mediation services. The mediator made a decision under s 140 of the Act, and in that decision Redican Allwood Limited was substituted for Mr Lloyd. That implied that Redican Allwood Limited was Mr Muncey's employer. The mediator's decision was expressed to be final and binding. Mr Muncey returned to the Authority because the mediator had ruled that he did not have jurisdiction to deal with the wages matter because he did not have any information before him that Mr Muncey's injury was a work related accident. The Authority ruled that it did not have jurisdiction to proceed because the parties had agreed for the mediator to make a final and binding decision under s 150 of the Act (Authority's Determination dated 18 August 2006, P R Stapp WA115/06 File Number 5041307).

[3] This gives rise to a number of points. First Mr Muncey's employer was Redican Allwood Limited. That is accepted. Second, the proceedings now cite Redican Allwood Limited on notice of the claim for a recovery of wages. Third, it is now agreed that the ACC assessment involved Mr Muncey's injury being a work related accident. Finally, although the mediator's decision was final and binding, it did not contain terms of reference that precluded any outstanding matters in Mr Muncey's employment from being dealt with, although it was final and binding on the issues that the mediator did deal with.

[4] The parties did not disagree with me making a determination on the matter in regard to the following issues I put before them, and they were given an opportunity to further reply, if they wished. They did not see any purpose in doing so. I have proceeded because the facts involved could be determined from the information given to me by them.

The Issues

[5] There are two issues. First, does the Authority have jurisdiction to proceed? Second, if the Authority has jurisdiction, is Mr Muncey owed any wages for his first week when he was off work due to an injury?

The Facts

[6] Mr Muncey was employed by Redican Allwood Limited. He was injured and the injury was assessed by ACC as a work place injury. Mr Finlayson says Mr Muncey breached his obligations to the Company and he has not been paid.

Findings

[7] I have decided that I have jurisdiction to proceed on the matter for the following reasons.

- These are new proceedings citing Redican Allwood Limited (not "Garry Lloyd"). The Authority could not proceed on the previous application because of the mediator's decision under s 150 of the Act and where the proceedings in the Authority cited "Garry Lloyd" without any change being made to include Redican Allwood at the time.

- The mediator's decision between Mr Muncey and Redican Allwood Limited does not include any terms of reference that preclude any outstanding matters in Mr Muncey's employment from being dealt with, although on the issues dealt with by the mediator they were final and binding. The mediator decided that he did not have jurisdiction because he did not have any information before him on whether or not Mr Muncey's injury was a work related accident. A determination on any wages due is not precluded because there are no terms of settlement or agreement with the mediator to the effect that his decision was in full and final settlement of any or all outstanding matters in Mr Muncey's employment. In other words it remains open for that matter to be determined by the Authority.
- The mediator's decision did not determine Mr Muncey's claim for the recovery of wages in regard to his first week of injury because of a lack of jurisdiction at the time because there was no information on whether or not the injury was assessed as a work related injury.
- ACC accepted coverage of Mr Muncey's injury. The parties agreed that Mr Muncey's injury was assessed by ACC as a personal injury that was work related.
- The parties are not able to contract out of the Injury Prevention, Rehabilitation, and Compensation Act 2001 not to pay the first week's compensation (applying s 98 (1) of that Act). There is no evidence of any issue about the requirements of s 98 (2) of that Act applying. S 98 (2) does not permit an employer not to pay the first week's compensation where the assessment has been made by ACC that the injury was work related. Mr Finlayson's claim that Mr Muncey breached his obligations to the Company is an entirely separate matter and he cannot simply offset an entitlement for the first week's compensation and the Company not pay Mr Muncey, I hold.
- A recovery action under s 131 of the Employment Relations Act 2000 is permissible under s 99 of the Injury Prevention, Rehabilitation, and Compensation Act 2001.

[8] The parties informed me that Mr Muncey's injury was assessed by ACC as a personal work related injury, although there is some suggestion that that ruling may be under some appeal. It goes without saying the ACC assessment included a duty on the employer to pay the first week's compensation, without any information to the contrary being provided.

[9] Therefore, Redican Allwood Limited owes Mr Muncey 80% of the amount of earnings he has lost for the first week (s 97 (2) of the Injury Prevention, Rehabilitation, and Compensation Act 2001). It was agreed Mr Muncey was paid \$16 per hour and worked 44 hours per week. His

weekly earnings would be \$704. His is owed 80% of this in the sum of \$563.20. I order Redican Allwood Limited to pay Mr Muncey the sum of \$563.20.

[10] Redican Allwood Limited is to also pay Mr Muncey the filing fee of \$70 so that he is not out of pocket. This matter did not get referred back to mediation because I considered it would not constructively lead to a settlement, given both parties had firm views on their positions, both parties had already been to mediation earlier and both parties were trying to avoid any further costs and lost time.

Summary of Orders made by the Authority

[11] I order Redican Allwood Limited to pay Jonathan Muncey the following:

1. Wages of \$563.20, and
2. Filing fee \$70.00

P R Stapp
Member of the Authority