

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Gayle O'Connor (Applicant)
AND Counties Manukau District Health Board (Respondent)
REPRESENTATIVES Gayle O'Connor In person
Sam Bartrum, Advocate for Respondent
MEMBER OF AUTHORITY Leon Robinson
INVESTIGATION MEETING 11 August 2005
DATE OF DETERMINATION 17 August 2005

DETERMINATION OF THE AUTHORITY

The Problem

[1] The Applicant Ms Gayle O'Connor ("Ms O'Connor") seeks the Authority's assistance in relation to the loss of her former employment with the Counties Manukau District Health Board ("the Board").

The Issues

[2] The Board has been represented in the Authority's investigation by Mr Sam Bartrum, its General Manager of Human Resources ("Mr Bartrum").

[3] In reply to Ms O'Connor's statement of problem, the Board refers the Authority to a Deed of Settlement executed by the parties under section 149 of the *Employment Relations Act 2000* and signed by a Mediator on 6 May 2004. I shall refer to that Deed and the agreement therein as "the settlement".

[4] In my preliminary investigations, I formed an initial view that the problem referred by Ms O'Connor was the subject of the settlement and therefore inappropriate for investigation by the Authority. I held a meeting with Ms O'Connor and Mr Bartrum to clarify both Ms O'Connor's contended employment relationship problem and the scope of the settlement.

The Determination

[5] I am satisfied from my enquiries of Ms O'Connor at investigation meeting that the real issue here is Ms O'Connor's desire to return to her former duties with the Board. The employment relationship problem arises because the Board has not permitted her to, or as it would say more correctly, that it is not required to permit her to do so.

[6] I find that the settlement relates to Ms O'Connor's former employment and the circumstances surrounding the way in which it ended. I do not compromise the confidentiality aspect of the settlement by referring to the details of it.

[7] Ms O'Connor appreciates that I am unable to investigate matters that were the subject of the settlement.

[8] I am satisfied that as a condition precedent to Ms O'Connor returning to her former employment, she must first satisfy the Board of her fitness to perform. I am satisfied too, and indeed Ms O'Connor does not disagree, that she has been unable to do so to date.

[9] Ms O'Connor implores the Board to "give her a go" in any event but with the assistance of a "buddy" to facilitate her return to work. But the Board is not required to do so and it cannot be compelled to by the terms of the settlement.

[10] I find therefore, that the Board is not obliged to allow Ms O'Connor to return to her former duties pursuant to the terms of the settlement and consequently, **I am unable to assist Ms O'Connor by making any formal orders directed at returning her to her former employment.**

[11] Quite independent of the legalities of the situation, I rather consider a return to work at this time would be harmful for Ms O'Connor herself and the Board is quite right to have concerns for its stakeholders, circumstances being as they are at present.

[12] I have much sympathy for Ms O'Connor having observed the obvious distress and suffering she presented with at my meeting with her and Mr Bartrum. I have no doubt about her abilities in her former duties and the level of her commitment to the Board and the community. I wish her well on her journey towards wellness and her ultimate return to her profession.

Leon Robinson
Member of Employment Relations Authority