

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Bill Palmer (Applicant)
AND Bluescope New Zealand Steel Ltd (Respondent)
REPRESENTATIVES Anne-Marie McInally, Counsel for Applicant
Katherine Burson, Counsel for Respondent
MEMBER OF AUTHORITY James Wilson
DATE OF DETERMINATION 27 July 2005

DETERMINATION OF THE AUTHORITY AS TO COSTS

Background

[1] In a Determination dated 15 February 2005 (AEA 900/04) Authority Member Ken Raureti found that Mr Palmer had not been unjustifiably dismissed by his employer, Bluescope New Zealand Steel Ltd, but did have a personal grievance in relation to how he had been suspended. In that Determination the Authority reserved the question of costs. The parties have been unable to resolve this issue between themselves and New Zealand Steel are seeking a contribution to their costs.

[2] Mr Raureti has since resigned as a member of the Authority. However clause 16 of the second schedule to the Employment Relations Act 2000 provides:

16 Investigation to continue on change in Authority

Where any change takes place in the member constituting the Authority, any investigation then in progress does not abate and is not affected, but is to continue and is to be dealt with by the Authority as if no change had taken place;...

This Determination is made by the Authority pursuant to that provision.

[3] I have discussed the issue of costs in this case with Mr Raureti who has made the following comments:

Mr. Palmer claimed unjustifiable dismissal, and was seeking reinstatement, reimbursement of lost earnings, and compensation for adverse emotional affects of the dismissal. The matter was investigated over two days, the first day being conducted on NZ Steel's site at the request of the employer representative, and the second day was resumed in the offices of the Authority. At the end of day two, I encouraged the parties to explore the possibility of whether they may be able to resolve the matter themselves. It is apparent that they made real endeavours to resolve their employment

relationship problem, and they also took advantage of the services of a second Authority Member to assist them, however the end result was that the matter was determined by the Authority.

The determination of the Authority was that Mr. Palmer did not have a personal grievance for an unjustified dismissal, but he did have a personal grievance for the way in which he was suspended and the remedies awarded to him were quite modest. During the efforts the parties made to try and resolve the matter at the end of the second day of the meeting, NZ Steel made a very reasonable offer of settlement, which they couched as being "Without prejudice save as to costs". NZ Steel is seeking an award of costs based on the "Calderbank" offer, and the limited success of Mr. Palmer's Authority outcome compared to what he turned down.

I have fully considered the submissions of both representatives, and comment that the offer of settlement made to Mr. Palmer was made after or at what effectively was the end of the investigation meeting. At that time the vast bulk of costs had already been incurred by the parties, and while the offer of settlement was in the circumstances reasonable, it was in my view too late to be given the weighting which it could realistically have received if it was made in good time before the Authority investigation.

If such an offer had been made in good time before the meeting, I would have had little hesitation in making a costs determination requiring Mr. Palmer to contribute a reasonable amount of money to NZ Steel. However for the reasons outlined above, it is my belief that, in exercising its discretion, the Authority should determine that costs in this matter should lie where they fall.

Determination

[4] I concur with Mr Raureti's comments and am satisfied that no award for costs should be made. Costs will lie where they fall.

James Wilson
Chief of the Employment Relations Authority