

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2018] NZERA Wellington 86
3023312

BETWEEN MARIAN EUGEN RADU
Applicant

AND TATANA CONTRACTING
LIMITED
Respondent

Member of Authority: Michele Ryan

Representatives: The Applicant in person
Teena Burns on behalf of the Respondent

Investigation Meeting: On the papers

Submissions Scheduled: 9 May 2018 from the Applicant
30 May 2018 from the Respondent

Determination: 1 October 2018

**DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Employment relationship problem

[1] Mr Radu was employed by Tatana Contracting Ltd (TCL) for 8 months in the role of Quality Control and Contracts Manager. His employment ended on 3 July 2018 when the parties entered into a settlement agreement pursuant to s 149 of the Employment Relations Act on the same date.

[2] Amongst other things, the settlement agreement required TCL to provide Mr Radu with a certificate of service. Clause 7 of the settlement agreement set out a range of matters the parties agreed the certificate of service would include.

[3] Mr Radu received the certificate of service of 10 July 2017. Between that date and mid-November 2017 he corresponded with TCL expressing dissatisfaction with

the content of the certificate of service. He asked TCL to alter the document and provided additional details and descriptors he wanted it to record.

[4] TCL was unresponsive to Mr Radu's correspondence over this period.

[5] On 13 December 2017 Mr Radu filed an application in the Employment Relations Authority (the Authority) to have TCL comply with the settlement agreement, and order penalties and costs.

[6] TCL replied directly to Mr Radu on 20 December 2017 and provided him with an amended certificate of service which included the details Mr Radu had sent it previously.

[7] On 23 January 2018, Mr Radu advised the Authority he wished to pursue his claim in regard to the claim for penalties and costs.

The Authority's investigation

[1] During a case management conference call the parties' agreed that Mr Radu's claim could be decided on the papers.

[2] This determination has been issued outside the timeframe set out at s 174C(3)(b) where the Chief of the Authority has decided exceptional circumstances exist.¹ As permitted by 174E of the Employment Relations Act 2000 (the Act) not all the material received has been recorded in the body of this determination. Instead I have expressed conclusions on the issue necessary to dispose of the matter.

The issue

[3] To determine whether a penalty for a breach of a settlement agreement should be awarded I need first to determine whether the settlement agreement was breached.

Did TCL breach the Record of Settlement?

[4] Clause 7 provided the following:

The respondent will provide the applicant with a written certificate of service on the respondent's letterhead stating dates of service, position held and a general description of duties. The certificate of service will also include positively worded points about the

¹ Employment Relations Act 2000, s 174C(4)

applicant's quality assurance. The certificate of service will be posted to the applicant at [the applicant's address] no later than 10 July 2017.

[5] There is no dispute TCL provided Mr Radu with; "*a written certificate of service on the respondent's letterhead stating dates of service, position held...*"

[6] As regards TCL's obligation to state; "*a general description of duties*" and to "*also include positively worded points about the applicant's quality assurance duties*", the certificate of service recorded the following:

... Marian was employed to take on the role of a Quality and Contracts Manager which involved the following main functions:

- Ensuring the business operates smoothly within the company's mission statement
- Develop and maintain a quality management system (TQS 1:2005) throughout the company to ensure the best possible products and services are provided to customers
- Preparing and updating quality documentation, basing the process on TQS 1:2005)
- Establishing and promoting a quality assurance culture within the company and outside
- Analysing statistical data from the customers' feedback, complaints and suppliers to identify trends that can improve the business
- Ensuring there is a continued quality improvement programme in place.

[7] Mr Radu alleges the original certificate of service was deficient. He says it did "*not mention in terms of roles and responsibilities for the contracts manager role at all*".²

[8] To resolve the matter I must determine what was agreed between the parties.

[9] When interpreting a contractual agreement the aim is to objectively establish what the parties intended. This can be achieved by examining the particular words used in the context of the agreement made.

[10] In *Firm PI 1 Ltd v Zurich Australian Insurance Ltd*³ a majority decision of the Supreme Court observed:⁴

² Statement of Problem

³ *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC

⁴ Above at [63]

...If the language at issue, construed in the context of the contract as a whole, has an ordinary and natural meaning, that will be a powerful, albeit not conclusive, indicator of what the parties meant. But the wider context may point to some interpretation other than the most obvious one and may also assist in determining the meaning intended in cases of ambiguity or uncertainty.

What was TCL obliged to do?

[11] The obligation under the settlement agreement was to state “*a general description of duties*”.

[12] The statements set out in the 6 bullet points are said by TCL to illustrate Mr Radu’s main functions.

[13] By its wording the first bullet point tends to suggest that the function “*of ensuring the business runs smoothly with the company’s mission statement*” was a requirement of Mr Radu’s contract management activities but the matter is not directly stated.

[14] The remaining 5 bullet pointed statements describe a range of duties Mr Radu performed and each of these concurrently included “*positively worded points about the applicant’s quality assurance*”. It is clear TCL’s focus was on the activities Mr Radu undertook when performing his quality control functions, as was required by the settlement agreement.

[15] Even if I accept there is some uncertainty concerning the content of the first bullet point, I am satisfied TCL provided a general description of Mr Radu’s duties.

Was the “general description of duties” sufficient?

[16] I agree there is nothing in the certificate of service which specifically identifies the duties attached to the contract management aspects of Mr Radu’s role.

[17] However, with the exception as to how the quality assurance work should be described, there are no further conditions on TCL’s obligation to provide a “*general description*” of duties. In the absence of some express wording requiring TCL to refer to particular duties or responsibilities it cannot be said TCL was compelled to include Mr Radu’s contract management functions. It follows that I am not persuaded TCL breached its obligations at cl 7 of the settlement agreement.

[18] If Mr Radu wished to have TCL itemise duties attached to his that portion of his role, those activities should have been recorded in the settlement agreement.

[19] Mr Radu has not been able to establish a breach of the settlement agreement. There are no grounds on which to award penalties or costs.

[20] Mr Radu's claim is dismissed.

Costs

[21] Costs are reserved.

Michele Ryan
Member of the Employment Relations Authority