

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Ian MacLean Reddie (Applicant)
AND Charterman Marine Services (NZ) Limited (Respondent)
REPRESENTATIVES Ian Reddie on his own behalf
Tim Saville for and on behalf of the respondent company
MEMBER OF AUTHORITY P R Stapp
INVESTIGATION On the papers, Wellington, 26 January 2005
DATE OF DETERMINATION 31 January 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

1. The applicant has lodged a statement of problem requesting the respondent - Charterman Marine Services (NZ) Limited (the Company) - to comply with a record of settlement. The respondent denied that it has not complied with the settlement.
2. The parties agreed for me to determine the matter on the papers. I have noted that the matter has not been to mediation. The Department of Labour mediation services wrote to Mr. Reddie informing him to file in the Authority and the respondent did not intend to enter into mediation for this matter. I considered that mediation would not constructively assist resolving the problem (applying section 159 of the Act) (letter produced) in considering the issues involved.

The facts

3. It is common ground that a record of settlement under s.149 of the Employment Relations Act 2000 was recorded, certified and signed by a mediator, an employee of the Department of Labour (record of settlement produced).
4. In the record of settlement, the parties agreed that all matters discussed during mediation shall remain confidential to them. The settlement was also a full and final settlement of all matters

between the parties. It was agreed between the parties that the employer would receive and fairly consider any future application by the employee (Ian Reddie) for employment with the company.

5. Mr Reddie deposed that Tim Saville, the company's managing director has given work to others who were employed after him or at the same time as his employment where he was not considered. He says that Mr Saville has chosen to totally ignore correspondence to him for employment. He says he has been treated unfairly, unlike other employees and that Mr Saville cannot find anyone to fill a position on a vessel as a cook or steward but instead would go through the Seafarers' Union rather than offer him a position. He says that the Union is blocking him from employment with Mr Saville. Mr. Reddie has not provided any details in regard to these allegations, although he has written to Mr. Saville on various matters concerning this problem.
6. Mr Saville, on behalf of the company, has refuted Mr Reddie's claim that Charterman Marine Services (NZ) Limited dishonoured the record of settlement dated 14 July 2004. Mr Saville deposed that the company has not advertised positions of employment since the settlement. He also deposed that he has received no formal applications for positions from Mr. Reddie to work with the company although he accepts that various letters have been received from Mr. Reddie. Mr. Saville deposed that he has engaged two relief cooks at the beginning of October for the redelivery voyage of a rig to Australia but says that it has to be noted that the relief were people who the company have employed previously in 2004 and are regarded as the company's second crew roster personnel.
7. Mr Saville deposed that he has not received a formal application from Mr Reddie other than a letter dated 17 July 2004 that offered to pay back the company the settlement amount agreed to in the record of settlement should Charterman Marine Services (NZ) Limited in turn offer Mr Reddie a position with the company and on terms of a minimum 3 x 1 month work cycle plus a run job.
8. Mr Saville deposed that the company will abide by the record of settlement should it have positions available and subject to Mr Reddie making a formal and acceptable application. Mr Saville says that the obligations on the company are confined to receive and fairly consider any future application.

The Authority's comments on this problem

9. In considering the sworn statements provided by Messrs Reddie and Saville it appears that the applicant has not established a prima facie case in this matter. It would appear from the correspondence between Mr Reddie and the company that Mr. Reddie has an issue that relates to matters in regard to an earlier problem that was settled between the parties in the record of settlement as a full and final settlement of all matters between the parties.
10. There is insufficient evidence of Mr Reddie applying to the company, other than Mr. Reddie's own belief, for employment obligating the company to receive and fairly consider any future application from him. The evidence produced does not establish that there is anything untoward about the employment of the second crew roster personnel Mr. Saville has referred to. Furthermore no evidence has been produced in regard to the allegations that Mr. Reddie has made that Mr Saville has given work to others who were employed after him or at the same time as his employment where he was not considered; that Mr. Reddie has been treated unfairly unlike other employees and that Mr Saville cannot find anyone to fill a position on a vessel as a cook or steward but instead would go through the Seafarers' Union rather than offer him a position and that the Union is blocking him from employment with Mr Saville. The evidence does not establish that the applicant's allegation that Mr Saville has chosen to totally ignore correspondence to him for employment has been malicious or deliberate considering Mr. Saville's deposed evidence that no proper application has been made by the applicant for employment. The applicant has not provided sufficient details in regard to his allegations that he could have reasonably been expected to provide in his statement of problem and sworn statement.
11. Without any evidence that the company has been acting unfairly or has not considered an application from him, there can be no case to answer. Mr. Reddie's claim for compliance is dismissed.
12. I would suggest to the parties that to fulfil their obligations under the record of settlement that Mr. Saville assist by informing Mr. Reddie how he is to go about making an application and in what form it is required for it to be considered for a vacancy. Mr Reddie should make a proper application to the company in the required form (but of course his settlement does not provide him with any guarantees other than that his application will be given fair consideration by the company).

13. Costs are reserved. I would make the comment that it is most unlikely that any costs would be awarded in this matter considering the parties are representing themselves.

P R Stapp
Member of Employment Relations Authority