

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 158/09
5144085

BETWEEN GERRIT REMMELZWAAL
Applicant

AND CRANE DISTRIBUTION
NEW ZEALAND LIMITED
Respondent

Member of Authority: R A Monaghan

Representatives: C Patterson, counsel for applicant
R Towner, counsel for respondent

Determination: 19 May 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Gerrit Remmerswaal says his former employer, Crane Distribution New Zealand Limited (“CDNZL”) dismissed him unjustifiably, prior to the end of his fixed term employment agreement, and has failed to make a payment in respect of the balance of the term.

[2] He says, too, that CDNZL breached the agreement by failing to complete a review of his position three months prior to the end of the term.

[3] In reply CDNZL says the employment agreement contemplated that the relationship could be terminated for good cause prior to the expiry of the term. Mr Remmerswaal’s position became superfluous to the company’s requirements, there was justification for disestablishing it, and the resulting dismissal was handled fairly and following consultation. It denies dismissing Mr Remmerswaal unjustifiably, as well as any unjustified action affecting Mr Remmerswaal’s employment to his disadvantage.

Application for removal to Employment Court

[4] The parties have applied by consent for the removal to the Employment Court of the following part of the employment relationship problem:

“Does the early termination of a fixed term agreement on the basis of a redundancy which contains a general right of termination on notice which is complied with by the employer amount to a breach of contract?”

[5] The application is made under s 178 of the Employment Relations Act 2000, on the grounds that:

- a. an important question of law has arisen other than incidentally; and
- b. the parties believe the ruling of the Employment Court will assist in resolving their employment relationship problem.

Determination

[6] In a memorandum in support of the application, Mr Towner advised that the parties agree the leading case on point is **Williams v Attorney-General in respect of the Secretary for Justice** [1999] 2 ERNZ 457.

[7] The parties also agree that the question set out is important both in the immediate context of resolving the problem (not least because the payment sought in respect of the balance of the term is \$250,000) and because it is not uncommon for fixed term employment agreements to be of a ‘hybrid’ nature. The parties disagree on the application of the **Williams** case to their circumstances, with CDNZL saying that certain parts of the decision on which Mr Remmerswaal relies are obiter dicta.

[8] I accept that an important question of law has arisen other than incidentally. The specified part of the employment relationship problem is removed to the Employment Court accordingly.

R A Monaghan

Member of the Employment Relations Authority