

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2014] NZERA Christchurch 121
5465604

BETWEEN PAMELA SHAW
Applicant

A N D SOUTHERN DISTRICT
HEALTH BOARD
Respondent

Member of Authority: M B Loftus

Representatives: Pamela Shaw on her own behalf
Peter Churchman QC, Counsel for Respondent

Investigation Meeting: On the papers

Submissions Received: 25 July 2014 from Respondent
4 August 2014 from Applicant

Date of Determination: 11 August 2014

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] On 17 June 2014 Ms Shaw, filed a statement of problem with the Authority asking that it addresses the circumstances which led to her resignation from the Southern District Health Board (SDHB), effective 3 October 2011.

[2] On 2 July 2014 SDHB responded with a strikeout application citing as its grounds the fact:

... the subject matter of these proceedings was fully and finally settled by a record of settlement dated 27 September 2011.

[3] In a telephone conference held on 24 July 2014 the parties agreed the strikeout application be addressed as a separate preliminary issue. They also agreed the

determination be based on written submissions with SDHB's first and Ms Shaw then replying.

[4] SDHB's position is the application is precluded by the record of settlement. It is drafted in the form prescribed by s.149 of the Employment Relations Act 2000 (the Act) and was signed by both Ms Shaw and a representative of SDHB in Invercargill on 27 September 2011. It was then forwarded to a Dunedin based mediator employed by the then Department of Labour, who signed the same day.

[5] It records the terms under which *the parties have agreed to negotiate a managed exit ... upon which the employee's employment will come to an end.* Eleven paragraphs follow, including one that reads:

The parties agree this is a final and binding agreement between them and is in full and final settlement of all matters pertaining to the employment relationship.

[6] The evidence is both parties had the assistance of legal advisers when concluding the agreement and each subsequently fulfilled their obligations under the settlement.

[7] On behalf of the SDHB it is submitted:

Section 149(3)(b) does not permit a party to bring the terms of a settlement agreement by action, application for review or otherwise, except for enforcement purposes. As this action is based on the same matter as the 2011 settlement agreement, the applicant is effectively seeking to bring the terms of settlement before the Authority.

The statement of problem should be struck out in accordance with Shaskey v. Chief Executive of Manukau Institute of Technology [2012] NZERA Auckland 86 and Bartlett v. Hawkes Bay District Health Board ERA Wellington, WA41/09 2 April 2009.

[8] Ms Shaw's response is she signed the Record of Settlement under duress, having told her lawyer she was unwilling to do so. She says she only signed once her lawyer told her she had no choice. She complains the lawyer had a conflict of interest as one of the terms saw her receive a contribution towards Ms Shaw's costs and the lawyer failed to provide adequate advice. She closes with the comment *I look forward to this matter being investigated and having the people responsible being held accountable.*

Determination

[9] The statement of problem records the problem Ms Shaw wants addressed is *unjust forcing my resignation ...* The resolution sought is a review of the file and the documentation contained therein.

[10] The file contains a five page statement prepared by Ms Shaw which describes the events leading to her resignation and the effects thereof. Attached are a number of relevant documents, including some pertaining to the settlements negotiation.

[11] A perusal of the statement of problem and its attachments confirms Mr Churchman's submission the application pertains to the same matters that were resolved by the Record of Settlement in September 2011.

[12] The law is, as Mr Churchman states, clear. I have no choice. The matter is resolved and the application must be struck out. It is.

Costs

[13] Costs are reserved.

M B Loftus
Member of the Employment Relations Authority