

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Joanne Louise Skinner (Applicant)
AND Stayinfront (Asia Pacific) Limited (Respondent)
REPRESENTATIVES Matthew Young, Advocate for Applicant
Rob Towner, Counsel for Respondent
MEMBER OF AUTHORITY Marija Urlich
INVESTIGATION MEETING 14 March 2005
SUBMISSIONS RECEIVED 16, 30 March & 6 April 2005-05
DATE OF DETERMINATION 4 May 2005

DETERMINATION OF THE AUTHORITY OF A PRELIMINARY ISSUE

[1] Ms Skinner's employment with Stayinfront (Asia Pacific) Limited ("Stayinfront") ended in April 2002 under terms set out in a document entitled "Confidential Settlement and Release" ("the agreement"). In September 2004 Ms Skinner lodged an application in the Authority alleging personal grievances for unjustified constructive dismissal and sexual harassment. Stayinfront says the Authority cannot investigate Ms Skinner's application because the agreement is a full and final settlement of all claims between the parties.

[2] Ms Skinner says she is entitled to have her personal grievances investigated by the Authority because the agreement does not preclude such an application, it was entered in circumstances which were unfair and notwithstanding the forgoing arguments, section 283 of the Employment Relations Act 2000 enables her to pursue her application.

[3] This determination deals only with the preliminary issue of whether the agreement stops Ms Skinner from pursuing any further claim in the Authority. To determine this issue the Authority must consider the following:

- (i) what the agreement covers;
- (ii) whether the agreement was supported by consideration;
- (iii) whether the agreement was induced by duress or undue influence.

Issues

(i) What does the agreement cover?

[4] Settlement agreements will generally be interpreted as limited to claims both parties were

aware of and to claims of the nature they were discussing¹.

[5] Clause 5 of the agreement provides:

“Ms Skinner agrees to accept the payment referred to in Clause 2, and the reference referred to in Clause 4, in full and final settlement of all claims, grievances, rights and entitlement (whether existing, contemplated, or not yet known to or contemplated by Ms Skinner) which she has or may have had against the Company, including any related or associated companies, and their respective officer (including Mr Tony Bullen and Mr Warren Tobin), directors and/or employees in respect of her employment or the termination of her employment with the Company.”

[6] The agreement resulted from negotiations between Ms Skinner and Stayinfront’s President, Thomas Buckley held in late April 2002. The negotiations were conducted at a distance because Mr Buckley lives in the United States and Ms Skinner in New Zealand. The negotiations were initiated when Mr Buckley telephoned Ms Skinner in April 2002 to advise he had become aware of her personal relationships with two senior Stayinfront managers, Tony Bullen and Warren Tobin. I find it more likely than not the purpose of the call was for Mr Buckley to express to Ms Skinner that this situation was unacceptable. Following this telephone discussion Ms Skinner and Mr Buckley entered email correspondence with a view to negotiating her exit from Stayinfront. These emails have been made available to the Authority and I accept they represent the totality of the negotiations.

[7] During the negotiations Mr Buckley raised with Ms Skinner her relationships with Mr Bullen and Mr Tobin, the disintegration of the relationship with Mr Bullen and the impact of this on the workplace. This situation led to Mr Buckley’s initiation of and the parties entering negotiations with a view to Ms Skinner exiting Stayinfront. The allegations of harassment had been already raised with Stayinfront; Ms Skinner had raised Mr Bullen’s alleged harassment of her with Mr Tobin and he had raised these issues with Mr Bullen. Ms Skinner and Mr Buckley’s email exchange is peppered with references to the circumstances which gave rise to the negotiations of Ms Skinner’s exit from Stayinfront and which form the basis of her personal grievances; Ms Skinner expresses her regret at being involved in “this mess” and finding herself in the position of “...having to offer my resignation...”, she refers to having taken legal advice and Mr Buckley and Ms Skinner refer to their preparedness to ride the matter out through the Courts and their preference to resolve the matter quickly.

[8] Clause 5 of the agreement is drawn very widely and its plain intention was to cover all issues arising out of Ms Skinner’s employment. It is apparent from the email exchange that at the time the agreement was entered both parties wanted finality and the agreement was the mechanism by which that was to be achieved. I find the personal grievances Ms Skinner wishes to bring before the Authority fall within those issues covered by clause 5 of the agreement.

[9] Mr Young submits section 283 of the Act enables Ms Skinner’s application to the Authority to proceed. He submits section 283 enables a party who has entered a binding settlement agreement to put that settlement agreement aside to pursue a personal grievance because section 102 of the Act enables an employee to pursue a personal grievance under the Act and section 238 prohibits contracting out of the Act.

[10] If Mr Young’s argument was accepted then there would be no certainty around any settlement of any employment relationship problem. Such a situation would undermine one of the express objectives of the Act which is to enable parties to resolve their employment relationship problems

¹ *Marlow v Yorkshire NZ Ltd* [2000] 1 ERNZ 206

themselves². This argument cannot succeed.

(ii) Was the agreement supported by consideration?

[11] Ms Skinner received a number of benefits on signing the agreement; she received almost \$72,000, a sum equivalent to a year's base salary and a reference. Clause 5 expressly states the payment and reference are in exchange for full and final settlement of all claims.

[12] These benefits were not existing contractual entitlements and amount to valid consideration for the agreement.

(iii) Was the agreement induced by duress or undue influence?

[13] Ms Skinner told the Authority she was depressed and receiving counselling during the period the settlement was negotiated and entered. Ms Skinner did not advise Stayinfront of this before or during the negotiation process.

[14] While I accept this was a difficult period for Ms Skinner I do not accept that she did not actively participate in the negotiation process to secure an outcome which was acceptable to her. Ms Skinner advised Mr Buckley she had taken legal advice following receipt of the first draft agreement. Ms Skinner told me at the investigation meeting she had received this advice from her sister who is a solicitor. The terms of the agreement included what was in effect a "cooling off" period; Ms Skinner was not required to tender her resignation until after the payment was made. Ms Skinner did not take advantage of this period to raise any concerns about the settlement and accepted the settlement money on payment.

[15] There is nothing in the email exchange which would indicate Ms Skinner was not in a fit state to negotiate or enter such an agreement. There is nothing in the email exchange which would indicate the negotiations were conducted in anything but a tone of professionalism and mutual respect. I am satisfied on the evidence received that the agreement was not induced by duress or undue influence and was freely entered by Ms Skinner.

Conclusion

[16] I am satisfied on the evidence received Ms Skinner freely resigned her employment with Stayinfront having negotiated an exit which was satisfactory to her. An agreement was reached between the parties, with the benefit of legal advice, which amounts to accord and satisfaction. I have found there was no element of duress or undue influence in the securing of the agreement. For these reasons Ms Skinner's personal grievance cannot proceed.

Costs

[17] Costs are reserved. I would invite the parties to attempt to resolve this issue themselves. If they are unable to do so they may make application to the Authority.

Marija Urlich
Member of Employment Relations Authority

² refer section 143 Employment Relations Act 2000