



- [2] In its statement in reply received on 27 September the Company says Mr Straume was justifiably dismissed as redundant on 14 June 2007 and that it has correctly interpreted and applied the applicant's profit share entitlement. It also says the matter should be investigated in Christchurch.
- [3] The parties have not undertaken mediation in respect of this employment relationship problem because of their disagreement as to where the problem should be investigated.
- [4] During a telephone conference on 7 September the parties agreed on a timetable for submissions in respect of the preliminary issue as to where the investigation should be convened, to reassess the value of mediation and resume the telephone conference following the Authority's preliminary determination on the location of the investigation and to consider a mutually acceptable mechanism such as an accountant's certificate in respect of the disputed profit share issue.

### **Applicant's Position**

- [5] In submissions dated 15 & 24 October Mr Straume argues – amongst other things – that, consistent with Regulation 13 (2) of the Employment Relations Authority Regulations 2000, the Authority has jurisdiction to accept the office in which the statement of problem was filed or direct the transfer of it to another office.
- [6] Mr Straume considers the Wellington office of the Authority to be nearest by the most convenient route to the place at which the events that gave rise to the problem occurred.
- [7] Matters in favour of the applicant and lodgement in the Wellington office, he says, include:
- a. Being the respondent's chief executive officer.
  - b. Under the terms and conditions of his employment Mr Straume was responsible for providing his own office, computer and motor vehicle. During his period of employment he lived and worked in Havelock North.
  - c. He will say on oath he only visited the respondent's Dunedin premises on 4 separate occasions during his employment.
  - d. His remuneration was paid to him in Hawkes Bay.

- e. The lap top provided to him as part of his terms and conditions of employment enabled him to carry out all of the job functions required of him from his home in Havelock North.
- f. His ability to perform his job from Havelock North was specifically negotiated by him at the commencement of his employment as recorded in the draft employment agreements.
- g. There is no assumption as there is in other civil jurisdictions that the proceedings should take place in the office nearest where the Company carries on business.
- h. The statement in reply alleges breach of the employment relationship by Mr Straume: the breach, if it occurred, took place in Hawkes Bay.

[8] Mr Straume says that, as he has raised a grievance, the onus is on the company to justify the disestablishment of his position. That position was recorded in draft employment agreements as being in Havelock North.

[9] Mr Straume says he is out of a job and without the income he previously enjoyed and would be disadvantaged by having to travel to Dunedin, in contrast to the cost of travelling to an investigation in Napier, whether or not costs are available following a determination by the Authority.

[10] In all the circumstances the correct office is the office of the Authority in Wellington.

### **Respondent's Position**

[11] There are two employment relationship problems in this case. One relates to the interpretation and application of a clause of the individual employment agreement (per par 1.2 of the statement of problem).

[12] The events that gave rise to the problem are the negotiation of the terms of employment in June 2006, which took place in Dunedin, the preparation of the second and third agreements in October and December 2006 which occurred in Dunedin and Mr Straume's allegation the Company intends to exclude all profits derived from certain sales (par 2.21 of the statement of problem, which the Company understands is a reference to a meeting in Dunedin on 23 May 2007).

- [13] As Mr Straume did not sign the second or third employment agreements no relevant part of the negotiation of the terms of employment took place in Havelock North.
- [14] Mr Straume worked from his residence in Havelock North but met with the respondent in Dunedin in the course of his employment, as well as travelling overseas: the Company's representatives never travelled to Havelock North.
- [15] The location base of Mr Straume's employment is not an "event" (Regulation 13(1) (a)) that gave rise to this particular employment relationship problem.
- [16] In respect of the interpretation/application problem the place at which the events that gave rise to the problem occurred is Dunedin and therefore the application must be lodged in Christchurch.
- [17] The events that gave rise to Mr Straume's second employment relationship problem, an alleged unjustified dismissal on the grounds of redundancy, include the following: a meeting held in Dunedin on 23 May 2007; preparation and delivery to the applicant in Dunedin of a letter dated 24 May; an offer made to meet Mr Straume in Dunedin on 7 or 8 June; and consideration by the Company of the alternatives advanced by the applicant on 23 and 24 May and his lawyer's letter, and the decision to dismiss, of which all took place in Dunedin where the respondent is. The place at which the events that gave rise to this problem is Dunedin: the closest office of the Authority is Christchurch.
- [18] The Company does not allege breach of contract by Mr Straume.
- [19] The parties' resources are relevant: since the applicant's termination for redundancy the Company has employed no staff and its work is being carried out by its managing director without remuneration. It is dependent upon advances and will need to borrow more to defend these proceedings. All of the Company's three witnesses, including its accountant, are Dunedin based; the respondent will have to pay its accountant for the time involved in his giving evidence.
- [20] Regulations 13(2) and 20 provide the Authority with discretion as to where an investigation is to take place. The application should be dealt with in the office of the Authority nearest to the places at which the events that gave rise to the problem occurred: *Dymond v Prestige Hotel Group Limited*, unreported, 14 March 2003, G J Wood, WA 33/03. For the reasons set out above that discretion should be exercised in favour of the respondent.

## Discussion and Findings

- [21] Regulation 13(1) (a) requires a person lodging an application to do so after considering which of Auckland, Wellington or Christchurch is the office nearest, by the most convenient route, to the place at which the events that gave rise to the problem occurred.
- [22] “Consider” is typically defined as “think carefully about”, “believe to be”, “take into account when making a judgement” and “look attentively at” (Concise Oxford Dictionary, 10<sup>th</sup> Ed). In other words, consideration must be genuine and reasonable while allowances must be made for the possibility of different people coming to different conclusions with respect to the same scenario.
- [23] There is no evidence to support a conclusion that, in the absence of agreement between the parties, Mr Straume failed to genuinely and reasonably consider the requirements set out in Regulation 13(1) (a).
- [24] There is similarly no evidence to support a conclusion that Mr Straume’s consideration is illogical or vexatious. That is because both parties agree a term and condition of the applicant’s employment is that he would work out of his Havelock North address (refer to clause 3, “Place of Work”, in the unsigned individual employment agreement attached to the statement in reply, etc). I am satisfied therefore that it follows, fairly and reasonably, from that agreement and the fact that Mr Straume largely worked out of his home that it is appropriate to investigate the “events” that gave rise to this employment relationship problem in the office in which Mr Straume filed his grievance, i.e. Wellington.
- [25] I am also satisfied that there is an appropriate element of compromise in the parties bearing some of the costs of meeting at a ‘midway’ point.
- [26] One of the events is a claim by Mr Straume that his dismissal because of redundancy was unjustified. It is trite to observe that it falls to the Company to justify the dismissal. It is almost equally obvious to record that both parties face real costs in bringing/defending their positions with the real prospect at the end that any victory will be Pyrrhic; any cost award would be equally valueless in such an outcome. It would be appropriate therefore for the parties to continue to look hard and professionally at the issue of what they stand to spend in this matter and what if any actual remedies might emerge from it.

[27] I am therefore satisfied, consistent with Mr Straume's application and after considering all of the relevant facts and the parties' respective arguments, that an investigation into the parties' employment relationship problem should be convened in Wellington. It would also make sense that the parties undertake mediation in the same location on the same day, or the day before, that investigation; a direction to that effect is likely. A conference call of the parties will be convened in the near future so as to determine suitable dates for both mediation and the investigation, and for appropriate timetabling for witness statements and documentary evidence.

### **Determination**

[28] For the reasons set out above I direct that this employment relationship problem be set down for an investigation, consistent with Mr Straume's application, in the Wellington office of the Employment Relationship Authority.

[29] Costs are reserved.

**Denis Asher**

**Member of the Employment Relations Authority**