

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN David John Tindall & Rosalyn Adrienne Oakley (Applicants)

AND NJG Holdings Limited (Respondent)

REPRESENTATIVES Applicants In Person
Mr McElwee for Respondent

MEMBER OF AUTHORITY Dzintra King

WITNESS INTERVIEWS 31 March, 3 April 2006

DATE OF DETERMINATION 12 April 2006

DETERMINATION OF THE AUTHORITY

This is an application for a compliance order. The parties attended mediation and reached an agreed settlement on 16 December 2004 pursuant to s.149 Employment Relations Act 2000. The applicants say the respondent has breached clause 8 of the settlement agreement. This states that the applicants are to “be permitted to enter on the premises to uplift personal property”. The personal property to be uplifted was not specified in the settlement agreement. The applicants are seeking to have the settlement agreement enforced by the making of a compliance order pursuant to s.137 (1) (iii).

The matter was referred back to mediation but no settlement was reached. I have taken evidence from both the applicants and the respondent by phone and it is clear that the essential matter in dispute is the nature of the personal property to be uplifted. Although I have been told there was a list there is no reference to any list in the settlement agreement and no list was attached to the settlement agreement. The applicants told me they would not go back onto the premises.

There is a discretion to refuse to issue a compliance order and after considering the history of this matter and the evidence I received I conclude that this is not an appropriate case for the making of a compliance order. There are two reasons for this:

1. The failure to identify the personal property means that obligations to be enforced are unclear: Hancock & Co Ltd v Wellington Hotel IUOW [1987] NZILR 613; and
2. There would be no practical benefit in issuing an order given that that the applicants have stated that they would not go onto the premises to uplift any personal property: NZ (with exceptions) Electrical etc IOUW v Remotron Lighting Ltd (in rec) [1990] 1 NZILR 583.

Costs

The respondent was not legally represented and no issue as to costs arises.

Dzintra King
Member of Employment Relations Authority