

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Peter John Willy (Applicant)
AND Carter Holt Harvey Limited (Respondent)
REPRESENTATIVES Paul Fisher, for Applicant
David France, for Respondent
MEMBER OF AUTHORITY Vicki Campbell
INVESTIGATION MEETING 21 February 2005
SUBMISSIONS RECEIVED 7 and 18 March 2005 for Applicant
14 March 2005 for Respondent
DATE OF DETERMINATION 14 April 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Peter Willy worked for New Zealand Forest Products Limited, which became Carter Holt Harvey Limited, for 49 ½ years. On 19 January 2003 Mr Willy's employment was terminated due to redundancy. Mr Willy was paid compensation in respect of 40 years of his continuous service. Mr Willy claims he should have received compensation in respect of his total service of 49 ½ years. He is seeking payment for the additional 9 ½ years.

[2] Carter Holt Harvey denies Mr Willy is entitled to payment based on his total service and says Mr Willy received his full entitlement to redundancy compensation.

[3] This employment relationship problem concerns the interpretation, application or operation of an employment agreement. The primary issue for this determination is whether Mr Willy was paid his correct entitlement to redundancy pay. In considering the answer to that question I have looked at the contractual documents between the parties which provide for redundancy pay. I have also considered the argument presented on behalf of Mr Willy as to whether the company are estopped from relying on the written agreement as a result of a verbal promise made to Mr Willy in March 1997.

The contract

[4] The law relating to the interpretation of employment agreements is well settled. What is required is to look at the plain meaning of the words. If these words are clear and can have only one meaning that should generally determine the matter. In his submissions Mr France summarised the principles to be applied in interpreting employment agreements as set out by Judge Colgan in *Aviation & Marine Engineers Association Inc v Pacifica Shipping (1985) Limited*, unreported, 16 April 2004, AC23/04 paras 42-46:

- *Employment agreements should be interpreted with reference to the relevant background circumstances and factual mix.*
- “One looks first at the words used – they must obviously be the starting point – and then at the surrounding circumstances to make sure that the first impression is correct and nothing in the surrounding circumstances requires modification of the most natural meaning of the words.” *This process has been referred to as “cross-checking”.*
- *The Court should adopt an objective approach to interpretation.* “What matters is not what the parties say they actually intended the words to mean but what a reasonably person in the field, knowing all the background, would take them to mean.”
- *Interpretation should not be literal but accord with “business common sense”.*
- *If the words are clear and can only have one meaning that should determine the matter.* “It is not the Court’s task to rewrite an agreement”.

[5] In 1992 Mr Willy signed an individual employment agreement which recognised that redundancy would arise where the employee became superfluous to the company’s requirements. The agreement stated that compensation payments would be in accordance with any “...*redundancy agreement applicable to salaried employees in force in the Company at the time of redundancy.*” This individual agreement was the individual agreement in force between the parties at the time Mr Willy was made redundant in 2003.

[6] At the time Mr Willy signed his individual agreement a collective redundancy agreement for salaried employees was in force, but expired on 31 March 1993. The collective redundancy agreement provided for “...*redundancy pay based on years of continuous service calculated on the following basis...*” The agreement then set out a table with the years 1 to 40 with applicable percentages to be applied to normal earnings for each year of completed service alongside each year in the table. The agreement also provided for part years of service between each stated year to be recognised with a pro-rata payment.

[7] On 6 April 1993, following the expiry of the collective redundancy agreement, Mr Reid, the then general manager wrote to Mr Sam Kennedy at the Forest Industries Staff union. Mr Reid advised Mr Kennedy that the company would honour the previous redundancy payment arrangements which he then proceeded to set out in the letter. The wording in the letter was identical to the wording in the expired collective redundancy agreement and stopped at 40 years. The arrangements in this letter expired on 31 March 1995.

[8] On 23 April 1996 a further letter was sent to the union undertaking to honour the arrangements set out in the 6 April 1993 letter until 1 April 1999.

[9] Between 1997 and 1999 the company embarked on a restructuring process. At that time the company and the union entered into a heads of agreement which provided for no compulsory redundancies and that all staff made redundant would do so on a voluntary basis.

[10] Following a request for information from Mr Willy regarding the amount of compensation he would be paid if he took voluntary redundancy, Mr Whyte confirmed in writing on 22 January 1998 to Mr Willy that the company would recognise his total continuous service (which was over 40 years) if he took redundancy in the “...*current restructuring process*.” Mr Whyte told the authority that he did this as an incentive, to encourage Mr Willy to take voluntary redundancy.

[11] In January 2003 the company embarked on a new round of restructuring which led to compulsory redundancies being made by the company. In 2003, in the absence of any other signed agreement with Mr Willy, it was agreed that the company would use the letter dated 6 April 1993 as the basis on which to calculate and pay Mr Willy’s redundancy compensation.

[12] Mr Willy says the table used in the 1993 letter is only an “example” for the basis for calculations. I do not accept that view. The letter sets out examples to demonstrate how the formula for calculating the redundancy payment works in practice. These examples are clearly headed “*example*”. The table is not headed “*example*” and I therefore find that the table does not represent an “*example*” of the basis for calculating the redundancy payments. The table sets out the “...*basis*...” or the source of information, for the calculation.

[13] I have applied the principles set out in *Aviation & Marine Engineers Association Inc v Pacifica Shipping (1985) Limited* and I am satisfied that the words used in the letter of 6 April 1993 are clear and unambiguous. The redundancy compensation payment is to be calculated using

“*continuous service*” and is to be “*based*” on the table set out which specifies payment for service from 1-40 years. There is nothing in the letter which requires the company to calculate redundancy pay on more than 40 years service.

Is the company estopped from applying the redundancy agreement?

[14] Mr Fisher, on behalf of the applicant submitted that the company was estopped from applying the redundancy agreement set out in the letter dated 6 April 1993. For an estoppel to arise there must be a representation, reliance on it and resulting detriment.

[15] Mr Willy gave evidence that in March 1997, Mr Stuart Riden (the then IR Manager), responded to a question posed by Mr Willy as to the interpretation of the letter dated 6 April 1993. Mr Willy says Mr Riden telephoned him and advised him that redundancy pay was to be calculated on a pro-rata basis to recognise continuous service beyond 40 years. Mr Willy says this was a representation made on behalf of the company to recognise his service beyond 40 years in his redundancy pay calculation, not just in the 1997-1999 restructuring but at any time in the future and that Mr Whyte’s letter to him in January 1998 confirmed this understanding. I am satisfied that the letter dated 22 January 1998 limited the recognition of total service to the election of voluntary redundancy as part of that restructuring process.

[16] Mr Willy says he relied on his understanding of the promise made by Mr Riden and confirmed by Mr Whyte, by not taking voluntary redundancy in the 1997-1999 restructuring process. I am not satisfied that Mr Willy relied on the representation to his detriment as he would not, on the evidence, have taken voluntary redundancy anyway. In a meeting between Mr Willy and Mr Whyte on 6 November 1998, Mr Willy told Mr Whyte that his reason for not taking voluntary redundancy was that he wished to work until he reached the age of 65.

[17] At that meeting, Mr Willy was advised that there was no guarantee that the redundancy clause would operate beyond 1 April 1999, when it would expire. I am satisfied that at the time Mr Willy made his decision not to take voluntary redundancy it was not in contemplation that Mr Willy would be made redundant before he reached the age of 65, or that if he was made redundant, that the letter dated 6 April 1993 would apply as it was due to expire on 1 April 1999.

I find against the submissions that Carter Holt Harvey Ltd is estopped from applying the redundancy agreement set out in the letter dated 6 April 1993 according to its meaning.

Summary

Mr Willy has not been successful in his claim that his redundancy payment was to include his total continuous service. I am unable to assist him further.

Costs

Costs are reserved.

Vicki Campbell
Member of Employment Relations Authority