

Attention is drawn to paragraph 4 prohibiting publication of certain information contained in this determination.

Determination Number: CA 32/03
File Number: CEA 371/02

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Warren Bellaney (First Applicant)
AND Wayne Falconer Bellaney (Second Applicant)

AND Victor Packaging Limited (Respondent)

REPRESENTATIVES Warren Bellaney, In person
Wayne Falconer Bellaney, In person
Penny Shaw, Counsel for Respondent

MEMBER OF AUTHORITY Helen Doyle

INVESTIGATION MEETING 27 February 2003

DATE OF DETERMINATION 20 March 2003

DETERMINATION OF THE AUTHORITY

The employment relationship problem

[1] The applicants' Wayne Bellaney and Warren Bellaney, are brothers. They both entered into separate settlement agreements under section 149 of the Employment Relations Act 2000 with the respondent Victor Packaging Limited on 31 July 2002. The Bellaneys' seek compliance with clause 5 of their respective settlement agreements. The Bellaneys' also seek compensation for damage done to them by the actions of the respondent and/or a penalty.

[2] Clause 5 in each settlement agreement provides:

Victor Packaging Ltd agrees to provide Wayne Bellaney with a reference focusing on the length of service and the positive aspects of his work performance on or before 8th August 2002.

Victor Packaging Ltd agrees to provide Warren Bellaney with a reference focusing on the length of service and the positive aspects of his work performance on or before 8th August 2002.

[3] The respondent says that it did comply with clause 5 in respect of each settlement agreement by preparing and providing a reference to Wayne and Warren Bellaney on 5 August 2002.

[4] The other clauses in both settlement agreements are to continue to remain strictly confidential to the parties. I prohibit therefore publication of both settlement agreements pursuant to clause 10 (1) of schedule 2 of the Employment Relations Act 2000.

The background

[5] Wayne and Warren Bellaney agree that they received written references from the Managing Director of Victor Packaging Limited, David Victor on or about 5 August 2002. They did not raise any concerns about the content of the references with Mr Victor.

[6] They say that the respondent had an obligation to verbally confirm a good reference.

[7] The Bellaneys' were concerned that they were not getting job interviews or if they got an interview there seemed a sudden change from the prospective employers in terms of attitude toward them. Wayne described it as "*if everything had gone cold.*" Both Wayne and Warren referred to difficulties in terms of positive feedback from employment agencies. They were suspicious of what Mr Victor may be saying to prospective employers.

[8] Warren Bellaney asked an acquaintance of his to telephone David Victor and pretend to be a prospective employer. The conversation was taped.

[9] A transcript of the telephone conversation was provided to the Authority. Mr Victor accepted that the conversation was probably along the lines recorded in the transcript although he could not recall the exact detail. The tape is no longer available. The transcript provided:

TRANSCRIPT OF PHONE CALL TO D.VICTOR ON 30/9/02

Mr. Victor we have been approached by Warren Bellaney for employment with us and he has given your name as a referee.Would it be alright to ask you some questions?

Yes

Thanks.How long did he work there?

About 3 years.

What was the reason for leaving?

There was a dispute between us and himself.I can't go into it unfortunately.

What responsibilities did he have?

His main responsibility was to run a colour coating machine....a machine operator.

What were his strengths?

He was ok at it...it's hard to really say to be quite honest.When he wanted to he could do a good job...but that was when he wanted to.

Were there any weaknesses?

Yeah...he sort of his way or no way,if you know what I mean.That would be one of his weaknesses.Or his way was the best.

How was his interaction with the other employees?

Um...not very good.

Is there anything else you would like to add?

I can't really tell you a lot. Basically I wouldn't employ him again.

The Bellaneys' say that this proves that they were indeed correct in their suspicions about what Mr Victor was saying to prospective employers.

[10] Mr Victor said that he simply answered the questions that were asked of him and that he is not prepared to lie to prospective employers. He is happy to undertake in the future that if a prospective employer contacts him he will simply refer the caller to the written reference dated 5 August 2002. He said that after the problem was lodged an employment agency did telephone him but he referred the caller back to the written reference.

Determination

[11] I discussed with the applicants at an earlier telephone conference what was available to them in terms of remedies under the Employment Relations Act 2000 when they had entered into settlement agreements. I forwarded relevant sections of the Employment Relations Act 2000. At the investigation meeting I encouraged the parties to see if some resolution of the problem could be achieved by agreement but unfortunately it could not.

[12] I have little difficulty in this matter in concluding that there has not been a breach of clause 5 in the settlement agreements for the following reasons:

- Clause 5 as set out in both settlement agreements requires Victor Packaging Limited to provide to both Wayne and Warren Bellaney a reference. That reference must focus on the length of service and positive aspects of Wayne and Warren Bellaneys' work performance and be provided on or before 8 August 2002. The last sentence makes it quite clear that the reference referred to in both settlement agreements is a written one.
- A written reference was provided by David Victor on or about 5 August. It was not a lengthy reference but set out the length of service of each applicant with Victor Packaging Limited and some positive aspects of work performance. Wayne and Warren Bellaney did not raise any concerns about the references provided.

[13] Having listened to Wayne and Warren Bellaney at the investigation meeting I appreciate that they are significantly distressed by what they see as David Victor harming their potential job opportunities and their credibility. Unfortunately there is nothing further that I can do to assist them with their employment relationship problem. I can only set out that Mr Victor has undertaken that in the future if he is contacted by a prospective employer he will refer the caller to the written references provided on 5 August to Wayne and Warren Bellaney. I suspect that will be of little comfort to them.

[14] I reserve the issue of costs. In the circumstances I may be minded to order that costs should lie where they fall. If however the respondent wishes to make submissions to the Authority then the respondent has 14 days to file and serve memorandum as to costs and the applicant has 14 further days to reply by way of memorandum.

Helen Doyle
Member of Employment Relations Authority