

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN John Howard Carter (Applicant)

AND The Treasury (Respondent)

REPRESENTATIVES Mr J Carter on his own behalf
Ms C Inglis for the Respondent

MEMBER OF AUTHORITY G J Wood

INVESTIGATION By way of Submissions Received by 22 December 2005

**DATE OF
DETERMINATION** 11 January 2006

DETERMINATION OF THE AUTHORITY

1. Mr Carter is seeking to have a problem between him and the Treasury referred to mediation. The problem relates to an apology from Treasury which Mr Carter wants implemented properly and to his fundamental claim that he has never been dismissed by the Post Office.
2. The Treasury took over the residual liabilities of the Post Office but consider that all matters between the parties have been resolved following previous litigation in the High Court.
3. In 1994 the High Court heard an application for judicial review by Mr Carter against the annulment of his appointment as a permanent employee of the New Zealand Post Office on 6 September 1984 (*Carter v. A/G* unreported, Ellis J, CP781/87, 24 November 1994). The High Court found that Mr Carter had established a failure by his employer to give him a final opportunity to either accept the work offered to him or be dismissed and thereby failed to observe the procedural requirements of natural justice. It was held that justice accordingly required that the decision to annul should be declared unlawful.
4. The High Court also held at page 12 ff:

“In this case the New Zealand Post Office ceased to exist on 1 January 1988 and was divided into New Zealand Post Limited, Telecom Corporation of New Zealand Limited, and Postbank Limited: Post Office Repeal Act 1987 and Postal Services Act 1987 in particular.

There remained no department of the Public Service as defined by the State Sector Act 1988 to take over the functions of the former Post Office when that Act came into force on 1 April 1988 (see s93). It follows that it is impossible to make a declaration that would give Mr Carter present employment with his former employer. This position is in contrast with that in Peterson's case (see p155). The only remedy would be damages....

However here, if Mr Carter had continued to be employed by the Post Office (and there must be very real doubts about the length of that) he would have in all probability become an employee of New Zealand Post Limited: State Owned Enterprises Act 1986, Fourth Schedule. New Zealand Post Limited is not a party to these proceedings, and so it is impossible to make an order reinstating Mr Carter in present employment. What can be said is that he should not have had his position annulled in August 1984 without having being first accorded the opportunity of responding to an ultimatum. Under all these circumstances I am not prepared to make a declaration that the annulment is null and void and should be set aside. The result is that he has been wrongfully dismissed.

5. The Court went onto require the parties to negotiate over the quantum of the damages.
6. It follows from this judgment that Mr Carter's employment was terminated wrongfully on 6 September 1984 but that no reinstatement was ordered. The High Court has accordingly held that Mr Carter's employment terminated on that date and it therefore follows that there was thereafter no employment relationship between Mr Carter and the Treasury (as the department who took over the responsibilities of the Post Office). The Treasury attempted to agree on remedies with Mr Carter and believed it had come to an agreement with him, which involved an apology amongst other things. Mr Carter does not agree with that assessment and therefore seeks that mediation assistance be directed by the Authority.
7. The Authority is a creature of statute. It does not possess any inherit jurisdiction (*BDM Grange Limited v Parker* (unreported, Baragwanath and Courtney JJ, CIV-2005-404-993, 19 July 2005). It can only operate where it has jurisdiction. The Authority's jurisdiction is set out in the Employment Relations Act. That Act provides the Authority with exclusive jurisdiction to make determinations about employment relationship problems. Employment relationship problems must relate to employment relationships that existed after 2 October 2000, when the Employment Relations Act came into force, as is reinforced by its transitional provisions. It is clear that Mr Carter has not had an employment relationship with the Treasury or even with the Post Office since 1984. It therefore follows that the Authority has no jurisdiction to investigate and determine his application. Given that Authority has no jurisdiction to entertain this application it would not be in the interest of justice to refer the application to mediation.

8. It appears that during the course of his lengthy submissions on the matter of jurisdiction and other ancillary claims made by Mr Carter that he implicitly acknowledges this. In a fax dated 16 December 2005 he notes concerns over the Authority's lack of jurisdiction over his claim and states:

"Therefore I would like to withdraw my claim from the Authority on the grounds that the Authority has no lawful jurisdiction to hear and determine it... However, I do not wish to withdraw until the Authority confirms:

- (a) That it has no jurisdiction to hear any issues regarding my employment;*
- (b) That its determination of 14.10.2005 is without jurisdiction and invalid, and*
- (c) Whether or not it may refund my application fees of \$220.00 as I am a beneficiary with about \$50 in the bank and need the money if I can get it back".*

9. In relation to Mr Carter's submissions, I noted at the time that he was free at any time to withdraw his application in accordance with clause 14 of the Second Schedule of the Employment Relations Act and that in the absence of an unconditional withdrawal, the Authority's timetable on both the original application and the application to reopen would continue without amendment. Mr Carter declined to withdraw and therefore this determination of the Authority has been necessary.
10. In relation to Mr Carter's specific points, I note that this determination confirms that the Authority has no jurisdiction to investigate any issues regarding his employment.
11. Mr Carter made an application for Crown Law to pay his legal expenses, which I declined in a determination of 14 October 2005. I note that the Authority has jurisdiction to determine such applications of an ancillary nature to an application that is already before it. Therefore there are no grounds for a determination that that determination is without jurisdiction or invalid.
12. Mr Carter has subsequently applied to have that aspect of the investigation reopened. In the interests of justice, i.e. to be transparent, I have referred that application on to another Member of the Authority, as it is in effect a challenge to the determination, even although it is usual for the same Member to deal with such applications.
13. With regard to Mr Carter's third submission, for a refund of his application fee of \$220 for the reopening, I have no jurisdiction to make such an order.
14. Mr Carter, in the course of his submissions, raised a number of other issues which are basically matters about how the investigation process should be conducted. These are irrelevant given the central conclusion that the Authority has no jurisdiction to investigate Mr Carter's concerns. No determination of these matters is necessary accordingly.
15. This matter, in relation to jurisdiction at least, has been relatively straight forward to determine. Despite that, Mr Carter produced submissions subsequent to the deadlines set, usually by request for an extension. On 20 December 2005 he was informed that the Authority would only take in account submissions made in writing before 22 December 2005. Mr Carter again sought to make further submissions on

11 January 2006, which apparently related to mediation assistance provided by the Employment Tribunal in 1996. I decline to accept any such submissions as they could not possibly alter, but only reinforce, the central conclusion made above.

16. Costs are reserved. Given that the respondent has been successful in all the matters before the Authority it follows that it may make an application for costs against Mr Carter if it so chooses.

G J Wood
Member of Employment Relations Authority