

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** John Howard Carter (Applicant)

**AND** The Treasury (Respondent)

**REPRESENTATIVES** John Carter on his own behalf  
Christina Inglis for Respondent

**MEMBER OF AUTHORITY** G J Wood

**INVESTIGATION** By way of submissions received by 12 October 2005

**MEETING**

**DATE OF** 14 October 2005

**DETERMINATION**

**DETERMINATION OF THE AUTHORITY**

1. Mr Carter is seeking to have an alleged employment relationship between him and the Treasury referred to mediation. The problem relates to an apology from Treasury which Mr Carter wants implemented properly. Subsequent to filing his employment relationship problem, Mr Carter has applied to have a lawyer appointed for him, to be paid by Crown Law. Crown Law has refused this request and the Treasury supports this approach.
2. Mr Carter's problems relate to his claim that he has never been dismissed by the Post Office. 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. Mr Carter's application for Crown Law to pay for his legal expenses is in order to give him a "fair go", by enabling the bargaining power between the parties to be equalised. Mr Carter says that he can not afford to instruct his own counsel.

4. The Treasury opposes this application as the Authority's jurisdiction in relation to costs is limited to ordering parties to pay costs, it was submitted. Thus it does not confer a power to award costs against non-parties such as Crown Law, or for the Authority to direct a party to appoint or pay for a lawyer in advance of an investigation. Furthermore, Treasury notes that matters in the Authority are routinely dealt with without legal representation and that the Crown has made no commitment to continue to pay Mr Carter's legal costs.
5. I start my analysis with Clause 15 of Schedule 2 of the Act, which provides:
  - "15. Power to award costs***
    - (1) The Authority may order any party to a matter to pay to any other party such costs and expenses (including expenses of witnesses) as the Authority thinks reasonable.*
    - (2) The Authority may apportion any such costs and expenses between the parties or any of them as it thinks fit, and may at any time vary or alter any such order in such manner as it thinks reasonable."*
6. Furthermore, clause 2 of the schedule provides that representation (or not) is a matter for each party to determine on its own initiative. There are no provisions which provide for the Authority to order anybody else to provide and/or pay for the representation of any one party.
7. The Employment Relations Authority does not possess an inherent jurisdiction. Its jurisdiction is confined to what has been conferred by statute - *BDM Grange Ltd v. Parker & Ors* (unreported, High Court, Baragwanath and Courtney JJ, CIV-2005-404-993, 19 July 2005).
8. The issue of the Authority's jurisdiction over costs is dealt with in clause 15 above. It does not provide for the Authority to order any party, let alone a non-party, to pay for the costs of another party, particularly in advance of the Authority's investigation.
9. In any event, the Legal Services Agency provides assistance to parties who are unable to pay for their own legal costs and that is therefore the appropriate body to determine whether Mr Carter should be given some legal assistance to bring his claim.
10. I therefore decline Mr Carter's application.

11. The Authority's timetable for the resolution of other matters will have to be amended as a result of this application. Accordingly, Mr Carter is to now have a further 21 days to provide written submissions on the issue of whether the matter should be directed to mediation or not; whether the terms of the "settlement" should be disclosed to the Authority or not; and whether or not the application should be dismissed without being investigated further. Crown Law then has 14 days to respond, with a final right of reply to Mr Carter of 14 days.

**G J Wood**  
**Member of Employment Relations Authority**