Employment Court of New Zealand

Coetzee v Oamaru Meats Limited [2021] NZEmpC 137 (18 August 2021)

Last Updated: 23 August 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

[2021] NZEmpC 137
EMPC 230/2020 EMPC 353/2020

IN THE MATTER OF	challenges to determinations of the Employment Relations Authority
BETWEEN	VERNON COETZEE Plaintiff
AND	OAMARU MEATS LIMITED Defendant

Hearing:	13–14 May 2021 (Heard at Timaru)
Appearances:	D Balfour, advocate for plaintiff L Laming and H Nimmo, counsel for defendant
Judgment:	18 August 2021

JUDGMENT OF JUDGE K G SMITH

[1] In April 2018 Vernon Coetzee was employed by Oamaru Meats Ltd as a maintenance electrician at its plant in Oamaru. He worked for Oamaru Meats until his employment ended on 6 September 2019, after he signed a settlement agreement with the company.

[2] The agreement was entered into while Oamaru Meats was consulting Mr Coetzee, and other staff, over possible redundancies but before that process concluded.

[3] Subsequently, Mr Coetzee lodged a claim in the Employment Relations Authority alleging that he had been unjustifiably dismissed and/or disadvantaged during the company's redundancy process that he believed was predetermined and breached the duty of good faith. He claimed to have been coerced and/or misled into signing the settlement agreement. As relief he sought the ability to pursue the personal grievance previously raised with the company before the settlement agreement was signed.

[4] The Authority dismissed Mr Coetzee's claims.1 It was satisfied that a binding agreement was created and that it was not open to him to avoid its terms.2 Consequently, Mr Coetzee was precluded from pursuing the personal grievance he raised.

[5] Mr Coetzee challenged the determination on the basis that it contained material errors of fact and law. Before discussing those alleged errors, a brief discussion of the circumstances which led to the agreement being signed is required to provide some context.

Proposed restructuring and personal grievance

[6] On 26 August 2019 Oamaru Meats' director, Richard Thorp, provided a letter to Mr Coetzee informing him of a decision to review the company's beef business. A potential reduction in staff was proposed and Mr Coetzee was advised that his position might be adversely affected by this proposal.

[7] Mr Thorp's letter contained a three-step timeline for consultation over the restructuring. The first step was that a meeting with staff directly affected by the restructuring proposal would take place to provide an explanation about it, to present and explain the consultation process. There is no disagreement that this step was taken.

[8] The second step was the creation of a consultation period with a deadline of 1 pm on Friday 6 September 2019 for responses to the proposal. The third step was

1 *Coetzee v Oamaru Meats Ltd* [2020] NZERA 276 (Member Beck).

2 At [113].

scheduled for Monday 9 September 2019, which was to be the date when the company would announce the outcome of the restructuring.

[9] The letter reminded Mr Coetzee that the restructuring was a proposal and his response to it was regarded as critical. He was informed that nothing would change until all the feedback had been considered.

[10] Mr Coetzee's initial response to the proposal was that it did not apply to his job or to him. He claimed to have moved on from the position of maintenance electrician, dealt with in the proposal, and to have taken up the role of maintenance manager. In this response, he asserted that the effect of Mr Thorp's letter would change his job back to maintenance electrician without consultation or prior notice. An explanation was sought.

[11] Mr Thorp acknowledged Mr Coetzee's response but disputed it. He did not accept that Mr Coetzee had been promoted to, or held, the maintenance manager's position before explaining that the decision to restructure was to reduce overhead costs. Mr Coetzee was reminded that the deadline for feedback was 6 September 2019.

[12] On 27 August 2019 Mr Coetzee raised a personal grievance for unjustified disadvantage arising from Mr Thorp's statement that he had not been promoted to the maintenance manager's position. The company was invited to address this grievance by providing reasons for that decision and to attend mediation. A response by 30 August 2019 was requested.

[13] Mr Thorp did not wait to respond. On 27 August he reiterated the points made previously, noting that the company was going through the consultation process about the proposed restructuring. Mr Coetzee was informed that he was not the maintenance manager. The personal grievance was rejected and Mr Coetzee was informed that the company considered he had not been disadvantaged.

[14] Mr Thorp's response did not satisfy Mr Coetzee. He considered that he had an agreement to assume the maintenance manager's role and was waiting for a new employment agreement to be provided to him recording that situation.

[15] Mr Coetzee did provide feedback about the proposal. In a separate email, dated 28 August 2019, he explained his work and expressed the view that the plant needed two staff members with his qualifications to cover the volume of work and absences. He was thanked for this response and advised that his feedback would be considered as part of the final decision making. He was reminded that further feedback could be provided right up to 1 pm on 6 September.

[16] Mr Thorp and Mr Coetzee met again on 30 August 2019 and the final meeting between them took place between 4.30 pm and 5 pm on 6 September 2019. It resulted in the settlement agreement at the centre of this proceeding.

The settlement agreement

[17] During the meeting on 6 September 2019, Mr Thorp prepared the settlement agreement to record what had been agreed between him and Mr Coetzee. It is a very brief handwritten document divided into three parts. Part one is a statement that Mr Coetzee did not require representation followed by his signature.

[18] Part two begins with the heading "Settlement" and the date "6/9/19". Underneath that heading there is a further heading "Full + Final Settlement" with a signature next to it. Underneath this heading the agreement recorded that one month's notice of four weeks' pay will be paid "in lieu", understood by the parties as meaning in lieu of that notice period being worked out. The amount payable for that period was quantified as $8,400 to be paid in the next pay round plus any "entitlements such as sick pay and holidays". Underneath the financial provisions the agreement recorded:

This is a full + final settlement of all matters related to the employment + redundancy of Vernon Coetzee.

[19] Mr Coetzee and Mr Thorp signed the agreement below this statement. Under both signatures there was a brief statement that Mr Coetzee did not have any possessions to take away with him. This part was also signed by Mr Coetzee and Mr Thorp as was the last part of the agreement, containing a statement that counselling assistance was offered but declined. Mr Coetzee's employment ended immediately.

[20] It was common ground that:

(a) The $8,400 was net of tax and was an agreed estimate of average earnings because Mr Coetzee's income varied week to week.
(b) The employment agreement did not require unused sick pay entitlements to be paid out when employment ended.
(c) Mr Coetzee was immediately released from his employment with Oamaru Meats and did not work out any notice period.

[21] The Authority held that there was a dispute before the settlement agreement was signed which it consequently resolved. It was satisfied that the agreement was freely entered into, conferred benefits on both parties, and prevented Mr Coetzee from continuing with the personal grievance he raised in August 2019.

The challenge

[22] Mr Coetzee challenged the determination on the basis that it contained material errors of fact and law.3 He sought to have the determination set aside and to be able to pursue his personal grievance claim. Separately the Authority ordered him to pay costs and the challenge sought to set aside that determination as well.4

[23] Five errors were alleged to have been made by the Authority in coming to the conclusion that the settlement agreement prevented litigation about Mr Coetzee's alleged personal grievance. They were:

i. It was an error in law that the Defendant was not required to explain what "full and final settlement" meant before obtaining the Plaintiff's signature.
ii. It was an error in law that the Defendant did not inform the Plaintiff of his right to obtain independent legal advice before signing the agreement.
iii. It was an error in fact and therefore in law for the Authority to equate advice from MBIE's 0800 help line as being "legal advice".
iv. That the Authority had insufficient evidence upon which to assess the Plaintiff's understanding of English as the matter [was] decided by the Authority on the paper only and the plaintiff had received assistance in compiling his paperwork.

3 Employment Relations Act 2000, s 179(4)(a); commonly referred to as non-de novo challenge.

4 *Coetzee v Oamaru Meats Ltd* [2020] NZERA 317 (Member Beck).

v. That the Authority erred in fact and in law with its differential thresholds as regards granting flexibility of approach to the Defendant but not to the Plaintiff when responding to the changing conditions of engagement in the redundancy process followed by the Defendant.

[24] While the claimed errors of law in paragraph [23] refer to alleged shortcomings in the Authority's determination there was another ground not specifically pleaded as an alleged error, but which was touched on in the statement of claim. That was a claim that Mr Coetzee believed he was coerced into signing the settlement agreement. That claim will be dealt with for completeness, because it was apparent Mr Coetzee intended to rely on it. Oamaru Meats was not disadvantaged by this approach because it had anticipated the argument and the subject was addressed by its counsel, Ms Laming.

[25] Oamaru Meats' response to the challenge was that Mr Coetzee entered into the settlement agreement for his own reasons, he was aware of his ability to seek advice, knew what he was agreeing to, was not coerced or subjected to improper pressure and the settlement agreement is binding on them.

[26] Each of the alleged errors will be addressed in turn.

Required to explain "full and final settlement"?

[27] There is an overlap between this alleged error and the claim that Mr Coetzee should have been advised to seek independent advice. The Authority was said to have erred by not giving what Mr Balfour, advocate for Mr Coetzee, described as "proper weight" to a finding it made that Oamaru Meats did not explain what "full and final" meant in the settlement agreement.

[28] The Authority began an analysis of the circumstances that led to the agreement being signed by satisfying itself that there was a dispute to resolve.5 It recorded a concession for Mr Coetzee, that a dispute existed, before analysing whether the parties had reached what was described as a "meeting of the minds".6

5 *Coetzee*, above n 1, at [59].

6 At [62].

[29] The Authority found that Mr Coetzee was pressing to resolve matters quickly, before the consultation period ended, because he wanted an exit package.7 The reason attributed to Mr Coetzee was a desire to move on to another job.

[30] The Authority did not accept Mr Coetzee's contention that there was a frailty in what happened in the lead up to the agreement being signed arising from the use of the phrase "full and final". In the determination, Mr Coetzee was recorded as having said he did not realise that those words would resolve the personal grievance claim or that it would "get around" the company having to address it.8 The Authority did not agree, in part because he did not put forward any alternative meaning for what was regarded as a self-explanatory term.

[31] While the Authority decided that Mr Coetzee understood what was intended by "full and final" in the agreement, noting that the words appeared twice in it, that was not the end of the analysis.9 Oamaru Meats was criticised because:10

...Mr Thorp did not pause during the meeting to specifically explain what 'full and final' entailed in terms of preventing further litigation. There was haste and no suggestion Mr Coetzee was advised to take the agreement away for legal advice before signing it.

(footnote omitted)

[32] Despite criticising the company, the Authority's conclusion was that the agreement was "not draconian and objectively did not disadvantage Mr Coetzee".11 The effect of the Authority's determination was to place an obligation on Oamaru Meats to explain what the agreement meant and provide an opportunity for advice to be taken before it was signed.

[33] The essence of Mr Balfour's submission was that having concluded that the 6 September meeting should have involved an explanation of the agreement and a suggestion to Mr Coetzee that he obtain advice, it was not appropriate for the Authority to conclude there was no disadvantage to him arising from it. In this analysis the

7 At [63].

8 At [77].

9 At [77].

10 At [100].

11 At [102].

Authority's conclusion that the agreement was not draconian missed the point. If the agreement was concluded after an unfair process that ought to have been the beginning and the end of the inquiry. The argument was that what the Authority did was identify a problem with the meeting and then excuse it.

[34] The Authority reached those conclusions by drawing on an earlier determination in *Evans v Building Connexions Ltd (t/a ITM)*.12 In *Evans* the Authority held that the duty of good faith placed an obligation on an employer to take reasonable steps to ensure that the employee in that case was not disadvantaged by signing the proposed settlement agreement and was fully informed of his rights by an independent person.13 To reach that conclusion the Authority relied on comments in *McHale v Open Polytechnic* made in the context of a discussion about accord and satisfaction.14

[35] Using *Evans*, the Authority concluded that Mr Thorp fell short of "the second element of this expressed requirement" in his dealings with Mr Coetzee. The reference to the second element was to remarks in *Evans*, about the employee in that case being fully informed by an independent person.

[36] Evans and *McHale* do not support the conclusions reached by the Authority. In *Evans* what underpinned the Authority's conclusion that the settlement agreement did not amount to an accord and satisfaction was the overbearing and unscrupulous behaviour of the employer in the circumstances leading up to the meeting at which the employee signed the agreement in question. The meeting had been called at extremely short notice, the employee was placed under pressure, and signed an agreement for less than his contractual entitlements. That behaviour was enough, by itself, to deprive the agreement of its validity. The Authority's subsequent remarks, about the nature and extent of the duty of good faith, were obiter. I do not consider that *Evans* supports the proposition that there was any duty on Mr Thorp to explain the agreement.

[37] McHale also needs to be seen in context. That case was an appeal from an Employment Tribunal decision to strike out the proceeding without a full hearing. The

12 *Evans v Building Connexions Ltd (t/a ITM)* [2012] NZERA Christchurch 2.

13 At [37]

14 *McHale v The Open Polytechnic of New Zealand* [1993] NZEmpC 36; [1993] 1 ERNZ 186.

Tribunal had done so without allowing the employee an opportunity to develop an argument that the agreement he had signed did not amount to an accord and satisfaction because of the surrounding circumstances which led to it being signed.

> [38] Most of *McHale* concerns the procedural steps that ought to have been taken by the Tribunal. In dealing with arguments that settlement had occurred, the Court stated that the onus was on the respondent employer to prove that the appellant employee had entered into the agreement willingly, with "informed assent", which inquiry was described as a mixed question of fact and law.15 No authority was cited for that proposition or the following one stating that a factual element in such an inquiry was whether the appellant had received "competent independent advice" before going on to say that it was not enough that he was seeing lawyers.16 Those were obiter remarks, to illustrate to the Tribunal that a full inquiry into the factual circumstances that were said to have given rise to the settlement should have been undertaken.
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> [39] Significantly, in *McHale*, the Court was concerned that what purported to be a settlement agreement was arguably no more than an acknowledgment that the employer would pay to the employee what was already owed. If that was correct, no binding agreement could, in fact, have been achieved because no bona fide dispute was being compromised.
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> *[40] McHale* offered no support for the proposition that accord and satisfaction required proof by the employer that the employee had received competent independent advice. What that means in practice was not developed in the decision. If the inquiry went as far as "competent" advice suggests, it opens up significant issues and the risk of inviting unintended consequences. What is to happen, for example, if it transpires that the employee received wrong or incomplete advice?
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> [41] It is also difficult to contemplate a situation in which one party to a dispute would be able to assess the quality of advice given to the other party especially when it will almost inevitably be confidential. I consider the comments in *McHale* about an

15 At 203.

16 At 203.

inquiry into the employee receiving competent advice go too far. For that reason, I would not follow or apply those obiter remarks in *McHale* as the Authority did.17

> [42] I do not agree with the Authority's conclusion that there was a duty on Mr Thorp to explain what "full and final" in the settlement agreement means. That would have placed the company in a difficult and irreconcilable position. It would be considering its own interests but assuming responsibility to explain the agreement to Mr Coetzee which would take with it associated risks if that explanation was inadequate or wrong. Mr Coetzee was representing himself and the company was entitled to treat him as accepting responsibility for understanding the agreement. As the Authority noted, the agreement was in plain English.
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> [43] The requirement that Mr Thorp pause the meeting is unsustainable. Mr Thorp knew Mr Coetzee had declined to be represented several times and was pressing for a prompt resolution. All the evidence indicates that the parties entered into an arms- length transaction, in which they looked after their own interests, before reaching an agreement satisfactory to both of them. Nothing said or done by Mr Coetzee would have placed Mr Thorp on notice that they should not proceed. Furthermore, during the meeting Mr Thorp did not act in an overbearing or otherwise improper way.
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> [44] While I disagree with the Authority's approach the conclusion is correct.
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> [45] No material error of law on the part of the Authority has, therefore, been established.
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> [46] This ground fails.

Independent legal advice

> [47] This ground is linked to the one just discussed. Mr Balfour submitted that the Authority erred by failing to take into account that Oamaru Meats did not inform Mr Coetzee of his right to seek independent legal advice. Mr Balfour acknowledged that

17 In *McHale* the Court referred to *Contractors Bonding Ltd v Snee* [1991] NZCA 322; [1992] 2 NZLR 157 in support of the proposition that a detailed factual inquiry is necessary. That case was about an alleged unconscionable bargain and undue influence over a vulnerable person not accord and satisfaction.

Mr Coetzee was informed that he could be represented but argued that what he was told was insufficient. A distinction was drawn between representation and legal advice.18 Mr Balfour relied on *McHale* which has already been discussed.

[48] Mr Coetzee was advised on four separate occasions that he had the ability to be represented when he dealt with his employer. The first occasion was when Mr Thorp and Mr Coetzee met on 26 August 2019, when the letter about the proposed restructuring was delivered. At that meeting Mr Coetzee was told he could be represented, or supported, if he wanted to be.

[49] The second occasion was the very next day, on 27 August 2019, in the course of correspondence between Mr Thorp and Mr Coetzee over the claim that Mr Coetzee's job was not actually affected by the restructuring proposal. In Mr Thorp's response, rejecting any suggestion that Mr Coetzee had transferred away from the affected position to work elsewhere in the plant, he was reminded of the ability to be represented.

[50] A third reminder was provided when Mr Thorp and Mr Coetzee met on 30 August 2019, at Mr Coetzee's request, to discuss an alternative proposal he had to redundancy. That was an offer by him to reduce his salary to stave off a pending reduction in staff numbers. At the beginning of that meeting Mr Coetzee was advised that he could be represented and declined to be. He signed an acknowledgment to that effect which included a comment that he could reconsider the decision he had made.

[51] The final reminder about representation was made during the meeting on 6 September 2019 as is recorded in the agreement itself.

[52] The Authority was not attracted to Mr Balfour's submission attempting to distinguish between representation and legal advice. That was because s 236 of the Employment Relations Act 2000 allows a party to choose any person as a representative. The Authority also relied on *Alofa v Aotea Centre Board of Management*.19 In that case the Court rejected a similar argument to the effect that the

18 *Coetzee*, above n 1, at [71].

19 *Alofa v Aotea Centre Board of Management* EmpC Auckland AC50/01, 30 July 2001.

employer had an obligation to ensure the employee was adequately represented in a disciplinary meeting. The Court decided that, so long as the employee was advised of a right to be represented, it was up to the employee to arrange appropriate representation and he or she could not complain if the representative failed to undertake the task properly. Ms Laming referred to *Alofa* and the subsequent decision of *Roy v Board of Trustees of Tamaki College* to the same effect.20 In *Roy*, the Court held that the employee was offered the opportunity to take advice and to be represented but chose to forego that opportunity.21

[53] I agree with the Authority and the conclusions in *Alofa* and *Roy*, although there may be occasions when the known circumstances of the employee require a more nuanced response by the employer. There are no such circumstances here. Mr Coetzee knew he could be represented and that opportunity took with it the ability to be advised about his circumstances. He made a choice but that is not something that can later be visited on Oamaru Meats.

[54] A related aspect of this alleged error was an attempt to argue that Oamaru Meats deliberately limited Mr Coetzee's options when it came to considering representation. He said that when the subject was raised he was offered the assistance of Trent Millns, Oamaru Meats Production Manager, with the clear message that he could not chose anyone else.

[55] Mr Thorp denied he had attempted to restrict Mr Coetzee's ability to choose a representative. He pointed out that there were several unions on site and that one of their delegates may have been prepared to assist Mr Coetzee.

[56] I do not accept that Mr Thorp behaved as claimed. He is a very experienced director who has been involved in several business restructuring proposals before this one. It was apparent he was taking care to ensure the fair treatment of Oamaru Meats' employees who faced the prospect of losing their jobs in the restructuring. That is why a lot of information was provided to them at the beginning of the process with a clear timeframe for consultation.

20 *Roy v Board of Trustees of Tamaki College* [2016] NZEmpC 20, [2016] ERNZ 687.

21 At [180].

[57] Given the care being taken it is unlikely Mr Thorp would have compromised the restructuring by attempting to restrict Mr Coetzee's choice of representative to Mr Millns or, for that matter, in any other way. Such a step would have been inconsistent with the company's insistence on using a good quality process to consult affected staff and would have created a conflict of interest, given Mr Millns' management role, which I consider Mr Thorp would not have entertained.

[58] There were practical considerations as well which lead me to conclude that no restriction was placed on Mr Coetzee's choice of representative. Mr Millns was not at work on 26 August 2019, because he was absent on sick leave. He was not available during the meeting on 6 September 2019 either, having left the site before the meeting between Mr Coetzee and Mr Thorp started. Mr Millns said, and I accept, that he starts work at 4.30 am each day and finishes work well before 4.30 pm when the meeting between Mr Thorp and Mr Coetzee began. Mr Thorp knew about Mr Millns' work commitments and it

is unlikely, even if he had been tempted to do so, that he would have offered the services of a person he knew was not at work.

[59] There was no failure or error on the part of Oamaru Meats in the way in which it informed Mr Coetzee that he could be represented if he chose to be. It follows that there was also no error in the determination where the Authority concluded that the right to be represented did not go so far as has been argued for by Mr Balfour.

[60] This ground fails.

Equating MBIE's 0800 helpline with legal advice

[61] Mr Balfour contended that the Authority wrongly identified information Mr Coetzee received from telephoning MBIE's advice helpline as being legal advice.

[62] There is no substance in this ground. The Authority did not confuse or misunderstand what had happened when Mr Coetzee called the helpline. All the Authority did was record that he was able to raise a personal grievance after using the helpline and had displayed "good knowledge of his grievance options".22

22 *Coetzee*, above n 1, at [94].

[63] The Authority was aware that using the helpline might have limitations, but this aspect of the determination had no bearing on the result. Little weight was attached to this information by the Authority in reaching its conclusions. At best it formed part of the background against which other assessments were made but no more than that.

[64] While Mr Coetzee explained that he misunderstood the function of the helpline, that does not derogate from the fact that he was able to raise a grievance and knew he could be represented.

[65] This ground fails.

The plaintiff 's understanding of English

[66] This part of Mr Coetzee's challenge underwent a transformation during the case. The alleged error was that Mr Coetzee did not understand the meaning of the settlement agreement because of his lack of proficiency in English. The claim was that the Authority had insufficient evidence on which to assess Mr Coetzee's understanding of English because the determination was made on the papers.

[67] By the end of the case, the claim transformed into being that he did not understand terms used in employment law where they have a specific legal meaning, referring to the phrase "full and final" in the settlement agreement.

[68] Mr Coetzee's first language is Afrikaans. He acknowledged proficiency in English but said that he struggles with the finer points of the language and the meaning of unfamiliar words. He agreed that a reasonable standard of English was required to obtain the work visa he needed for his job and that he had passed examinations for his electrical qualifications in English. While acknowledging he used English in his job, he considered that his apparent competence in day-to-day English led to an unjustified assumption that he understood more than he really did when signing the settlement agreement.

[69] Mr Coetzee was concerned that, because the Authority dealt with the matter on the papers, it did not appreciate his language-related difficulties or realise he had help

in preparing the written statements he made to it. As an example of these difficulties he referred to not understanding the phrase "on the papers", at least initially, until it was explained to him.

[70] Oamaru Meats did not accept Mr Coetzee's claimed lack of proficiency in English. Mr Thorp considered Mr Coetzee's command of English to be very good and that he understood their discussions.

[71] Mr Beresford, who is the Engineering Coordinator for Oamaru Meats and was Mr Coetzee's manager, did not agree that Mr Coetzee had difficulties understanding English.

[72] Mr Beresford and Mr Coetzee are both from South Africa. Mr Beresford's first language is English but he speaks Afrikaans. Mr Beresford explained that he and Mr Coetzee conducted their conversations about work, and when they met socially, in English. They spoke English to each other even when Mr Coetzee described being under stress caused by uncertainty over the future of his job after the restructuring was announced and in the lead up to the meeting on 6 September 2019.

[73] Mr Beresford pointed out that English is an official language of South Africa and that it is a compulsory subject at school there. He explained that he and Mr Coetzee have common qualifications obtained in South Africa. They attended the same training institute where the tuition was in English. They both obtained residency in New Zealand which required proof of competence in English. He said, and Mr Coetzee accepted, that to work as an electrician in New Zealand approval had to be obtained from the Electrical Workers Registration Board. Mr Coetzee had to complete examinations which focused on the standards applicable in New Zealand. The relevant examination is "open book" but requires a good understanding of the Electrical (Safety) Regulations 2010 and the Electricity Industry Act 2010; Mr Coetzee acknowledged that he achieved a high pass mark.

[74] I find that Mr Coetzee has a very good grasp of English. That was no more apparent than during cross-examination where he was more than comfortable in being able to acknowledge and answer the questions asked of him.

[75] There is also no substance to the argument that the use of "full and final" to describe the settlement agreement involved the use of a phrase with a special meaning that somehow disadvantaged Mr Coetzee. The words used are plain English and could not be accurately described as unique to employment law. The meaning they convey ought to have been apparent to a person having Mr Coetzee's level of English comprehension.

[76] I am satisfied that Mr Coetzee understood the discussion on 6 September 2019 and the meaning of the settlement agreement. The Authority did not make any error in its conclusions.

[77] This ground fails.

Differential thresholds.

[78] This claim was that the Authority lacked impartiality allowing Oamaru Meats to alter the scope of the "declared process over the restructuring without adverse comment".

[79] This claim can be disposed of succinctly. There was no indication anywhere in the Authority's determination that it failed to properly consider and weigh up the competing arguments impartially.

[80] Oamaru Meats did not do anything to alter what was referred to in submissions as the "declared process". It is possible this submission means only that entering into the settlement agreement was premature and therefore wrong because the final decision was not due until 9 September 2019. If that is the argument, I do not accept it. Mr Coetzee was the driving force behind seeking to resolve the uncertainty over his employment earlier than planned. As Ms Laming said, what took place on 6 September 2019 was not a premature decision on the redundancy process but a meeting which led to the agreed basis on which Mr Coetzee's employment ended.

[81] The Authority did not make any error of law or fact in considering the conduct of the redundancy process or, for that matter, in being satisfied that an agreement could be entered into before the consultation phase was completed.

[82] This ground fails.

Coercion?

[83] Mr Coetzee alleged he was coerced into signing the settlement agreement because Mr Thorp informed him, at the start of the meeting on 6 September 2019, that he was in a hurry to get away to a meeting with the Ministry of Primary Industries.

[84] That allegation was coupled with one criticising the change in focus of the meeting. It was said that the meeting had originally been to provide feedback about the redundancy proposal, but that purpose was jettisoned and instead it became a discussion about the cessation of Mr Coetzee's employment. That combination of circumstances, it was argued, resulted in the agreement being prepared hurriedly and in circumstances resulting in his rights being compromised.

[85] Mr Coetzee explained that he felt coerced into signing the agreement to protect his statutory minimum entitlements and to safeguard his family because he said he needed ongoing work to maintain his visa. The Authority rejected this claim holding that Mr Coetzee had not been coerced, misled or deceived into entering into the settlement agreement.23

[86] A contract obtained through duress can be set aside. Duress in this context is the imposition of improper pressure by threats that coerce a party to enter into a contract. Contracts procured by duress are voidable at the behest of the coerced party.24 That is, unless, the party alleged to have been coerced has subsequently affirmed the contract.25

23 At [104].

24. See the discussion in *McIntyre v Nemesis DBK Ltd* [2009] NZCA 329, [2010] 1 NZLR 463 at [19]; and *Pao On v Lau Liu Long* [1979] AC 614 (PC) at 364.
25. *McIntyre*, above n 24, at [19]; and see *North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd* [1979] QB 705.

[87] In *McIntyre v Nemesis DBL Ltd* the Court of Appeal accepted that duress extends beyond threats of physical injury or injury to property and includes the exertion of economic pressure. The Court held that duress involves two fundamental elements. First, there has to be the exertion of illegitimate pressure on a victim. Second, that pressure must have compelled the victim to enter into the contract.26

[88] McIntyre discussed coercion as a constituent part of improper pressure. Accepting that it was difficult to adequately define what coercion means the Court of Appeal adopted the following passage from *Universe Tankships Inc of Monrovia v International Transport Workers' Federation*:27

Compulsion is variously described in the authorities as coercion or the vitiation of consent. The classic case of duress is, however, not the lack of will to submit but the victim's intentional submission arising from the realisation that there is no other practical [alternative] ...

[89] In *McIntyre* the Court considered the question of whether there was coercion in fact, focussing on the availability of alternatives and other relevant factors. In that case those other factors were said to be:28

(a) whether the person said to have been coerced did or did not protest;
(b) whether the person was independently advised; and
(c) after entering the contract whether the person said to have been coerced took steps to avoid it.

[90] Mr Coetzee's claim to having been coerced into the settlement agreement falls at the first hurdle. Mr Thorp was not in a hurry to end the meeting and had no competing commitment for his time. He did not place any pressure on Mr Coetzee to hurry through the meeting, or in any other way, to bring about the agreement they signed. All the indicia point the other way. Mr Coetzee has a skill that is in short supply. He had been approached with offers of alternative employment previously.

26. *McIntyre*, above n 24, at [19]; and by reference to *Universe Tankships Inc of Monrovia v International Transport Workers' Federation* [1983] 1 AC 366 at 400.

27 *McIntyre*, above n 24, at [66].

28 At [68]; and see *Packwood v ANZ Bank New Zealand Ltd* [2019] NZEmpC 130.

His representations to Mr Thorp were designed to accelerate the discussions that would otherwise have taken place on the following Monday so that he was free to work elsewhere.

[91] Mr Coetzee set about negotiating an exit package which benefited him. He secured a payment and he was relieved of any obligation to work out his notice. He secured an additional financial benefit by having sick pay grossed up and paid out to him which he was not contractually entitled to. Those facts do not suggest any improper or illegitimate pressure.

[92] If Mr Coetzee felt any pressure that was because of his desire to achieve a settlement immediately and his need to persuade Mr Thorp to agree. That does not cross the threshold into being illegitimate pressure.

[93] Finally, the money agreed to be paid was paid. Mr Coetzee made inquiries about payment over the following days chasing it up. He did not protest about having signed the agreement. Because the agreement was performed it would not, in any event, have been set aside.

[94] The Authority did not make an error in rejecting this part of Mr Coetzee's claim.

[95] This ground fails.

Conclusion

[96] Underlying Mr Balfour's submissions was an argument that the parties had not reached an agreement that was final and binding on them and Mr Coetzee should be free to litigate. I am satisfied that Mr Coetzee knew and understood what he was doing and that he entered into the agreement willingly. He has not shown that the Authority's determination was wrong in any material way and his claim is dismissed.

[97] Consequently, the challenge to the Authority's determination on costs also fails.

[98] Costs are reserved. Costs were provisionally fixed on a Category 2B basis and that allocation is now confirmed. Oamaru Meats may make submissions in support of a claim for costs within 20 working days from the date of this judgment. Mr

Coetzee may respond within another 15 working days.

K G Smith Judge

Judgment signed at 2 pm on 18 August 2021
