

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Sean Deasy (Applicant)
AND Fulton Hogan Limited (Respondent)
REPRESENTATIVES Applicant in Person
Eska Hartdegen, Counsel for Respondent
MEMBER OF AUTHORITY Dzintra King
INVESTIGATION MEETING 3 March 2006
DATE OF DETERMINATION 3 March 2006

DETERMINATION OF THE AUTHORITY

The applicant, Mr Sean Deasy, seeks compliance with clause 8 of the mediated Settlement Agreement. The respondent, Fulton Hogan Limited, says that it has complied.

Clause 8 states:

Fulton Hogan Auckland will reimburse Sean Deasy's medical and travel expenses up to today's date (23rd June 2005) on provision of an invoice and receipts.

The mediation took place in the morning and as part of the settlement Mr Deasy gave his resignation "effective immediately". The proceedings were concluded by 2.15pm and the settlement was "a full and final settlement of all employment related matters between the parties".

Mr Deasy had had an accident which involved injury to one of his fingers. He also had stress related issues. These were matters of which the company was aware.

Following the mediation Mr Deasy sought medical treatment for an ankle injury at the White Cross Accident and Medical Clinic and had an x-ray. It is these two accounts that he seeks to have reimbursed.

The respondent says that it had no knowledge of this injury at the time the mediation was conducted and concluded and that it could not therefore have been within the contemplation of the parties that this would be included as part of the settlement. Further, the company says that "up to" does not include medical expenses that were both unanticipated and incurred after the mediation had concluded and Mr Deasy had resigned.

I am satisfied that Mr Deasy had not notified his ankle problem to his employer. The company has a process for accident notification, which Mr Deasy was aware of and had used previously.

He maintained the injury took place on 8 June but his very extensive diary notes make no reference either to an accident or to any notification either to his employer or to any medical practitioner. Even when Mr Deasy saw a doctor on 14 June there was no reference to the ankle injury.

In the context of the Settlement Agreement “up to” means “until” or “before”. The medical expenses incurred do not fall within the ambit of the Settlement Agreement. Nor were they in contemplation at the time the agreement was concluded.

The respondent has complied with the terms of the Settlement Agreement.

Costs

Should the parties be unable to resolve the issue of costs the respondent should file a memorandum within 28 days of the date of this determination. The applicant should then file a memorandum in reply within 14 days of receipt of the respondent’s memorandum.

Dzintra King
Member of Employment Relations Authority