

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Adrian Disseveld (Applicant)  
**AND** Axe Mark Holdings Limited (Respondent)  
**REPRESENTATIVES** Ian Thompson, Advocate for Applicant  
R Zwarst, Advocate for Respondent  
**MEMBER OF AUTHORITY** R A Monaghan  
**ADDITIONAL  
INFORMATION OBTAINED** 6 January 2005  
**DATE OF DETERMINATION** 21 February 2005

**DETERMINATION OF THE AUTHORITY**

**Employment relationship problem**

[1] Adrian Disseveld has applied for a reopening of the investigation into his employment relationship problem. The problem was the subject of a determination of the Authority in **Disseveld v Axe Mark Holdings Limited** 27 August 2004, CA 105/04. The Authority found Mr Disseveld did not have a personal grievance in respect of his redundancy.

[2] By agreement the application has been determined on the papers.

[3] The application was made on the following grounds:

- (a) the respondent failed to co-operate by confirming its trading name;
- (b) the respondent failed to take part in any directions conference;
- (c) the respondent failed to provide a statement in reply;
- (d) the respondent failed to provide a witness statement as directed by the Authority;
- (e) the respondent failed to attend the investigation meeting;
- (f) the applicant does not agree that the Authority was able to make a fair determination when disadvantaged by (a) – (e).

[4] No other detail or information in support of the grounds was provided.

**Determination**

[5] It may be that the respondent was guilty of the inaction set out in paragraphs (a) – (e), although Mr Zwarst responded to the present application by providing an explanation of some of those matters. However at the time of the investigation meeting the respondent was at significant risk of a finding against it since it had not provided any answer to the allegations in respect of Mr

Disseveld's redundancy. Indeed that is very often the outcome for respondents who are guilty of similar inactivity, but adverse findings are not automatic.

[6] This is particularly so in an institution like the Employment Relations Authority. It arises out of the Authority's investigative approach, its ability to follow whatever procedure it considers appropriate, and its ability to fully examine any witness. Thus it was open to the Authority member to question Mr Disseveld in such detail as he saw fit in order to find out what he could about the termination of the parties' employment relationship. The determination dated 27 August 2004 indicates the Authority member questioned Mr Disseveld, took into account written material available to him, and reached his decision.

[7] Accordingly while it is not surprising that Mr Disseveld might have expected his allegation of unjustified dismissal to prevail so that he obtained a determination in his favour, it remained open to the Authority to take the approach it did.

[8] As for whether the investigation should be reopened, because of the way in which the grounds for the application to reopen were formulated I sought further information from the advocate for Mr Disseveld. I asked in particular that he expand on (f) as set out in [3] above. I included a request for an indication of what information the respondent might have contributed had it participated in the investigation meeting, and how this would have led to a fair result.

[9] In reply the advocate raised particular concerns about the procedure the employer had followed in imposing Mr Disseveld's redundancy. They included a concern that Mr Disseveld was the only person made redundant but was unaware of the criteria by which he was selected for redundancy, Mr Disseveld did not have advance notice of a meeting on 3 June 2003 where the downturn in the employer's business was identified, and was not advised of a right to representation. It was further submitted that if the Authority had been given an opportunity to investigate the 3 June meeting, the outcome might have been different.

[10] However a review of the documents available to the Authority at the time indicates the above points were made on behalf of Mr Disseveld, or at least that the Authority was aware of them. The documents also show the employer's position was that it had suffered a serious downturn in business, which was borne out by its subsequently ceasing to trade, and that the 3 June meeting was held to advise of the downturn as well as seek Mr Disseveld's suggestions as to how redundancy could be avoided. A letter from its representative recorded that Mr Disseveld was a part time spray painter who was not able or willing to do any jobs other than spraying jobs, while staff who had other skills were able to do spraying jobs as well. Finally, during the 3 June meeting Mr Disseveld suggested a reduction in his hours, but that was not seen as a viable option. Accordingly the letter of termination dated 5 June 2003 was forwarded.

[11] The Authority's determination indicates that the member sought to discuss these points with Mr Disseveld. At [12] the member recorded some aspects of the 3 June meeting that were obviously not in dispute, including the advice of the downturn in business and Mr Disseveld's offer to reduce his hours of work. The member went on to say that: "He told me that the meeting took about 30 minutes or so but he could not tell me what else happened during that time." He also accepted that the reason for Mr Disseveld's selection for redundancy was discussed with him on 3 June.

[12] What remains of the advocate's reply is his indication that he would have sought to question the respondent. One particular question he wanted to put to the respondent was: "Clearly you had taken the opportunity to seek advice ... Why did you not follow reasonable expected procedure?" There is a threshold, although not necessarily a high one, that must be reached before the prospect of the availability of further information requires the reopening of an investigation. Questions of the kind just set out are

argumentative rather than probative, and the response likely to be elicited from such a question is very unlikely to meet the threshold. Otherwise the procedure itself was addressed during the Authority's investigation, as was the question of whether the redundancy was genuine. I have not been provided with any material capable of suggesting to any degree that the provision of additional information, in the person of the respondent, could affect the outcome.

[13] For these reasons I decline to reopen the investigation.

**R A Monaghan**  
**Member, Employment Relations Authority**