IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

CA 175/08
5138675

	BETWEEN	JEANETTE EDWARDS Applicant
	AND	KIWI STUFF LIMITED Respondent

Member of Authority:	Philip Cheyne
Representatives:	David Beck, Counsel for Applicant Phil Butler, Representative for Respondent
Investigation Meeting:	By Phone on 24 November 2008
Determination:	24 November 2008

DETERMINATION OF THE AUTHORITY

---

[1] As lodged and responded to this matter represents a waste of everyone's time.

[2] On 19 September 2008 the applicant through counsel wrote to her employer raising grievance allegations described as *potential unjustified constructive dismissal/Unjustified action.* There followed some discussion between the representatives on a *without prejudice* basis. Matters not having been resolved, the applicant through counsel sought mediation. The respondent through its representative communicated its position that it would reply to the grievance letter and in the meantime would not be agreeing to attend mediation.

[3] A statement of problem was lodged with the Authority on 3 October 2008. The applicant only sought urgency and a direction to mediation on the basis that *The respondent's counsel has indicated that his client is refusing to attend mediation.* The proceedings were served on the respondent as usual and a statement in reply was received on 17 October 2008. The respondent asserted that there were no grounds for seeking a direction from the Authority and sought costs against the applicant. The reply also indicated that the respondent would be replying to the applicant's grievance

letter and raising its own serious issues following which it would cooperate with arrangements for mediation if that was still required.

[4] During today's phone conference, with both parties agreeing to participate in mediation I made a direction to that effect. The applicant should initiate mediation, the Authority will advise the Mediation Service about this direction and I note that the respondent has committed to expedite the matter. The parties are reminded of their obligation to comply with this direction and attempt in good faith to reach an agreed settlement of their differences. Except for the question of costs, that agreed direction brings this matter to a conclusion.

[5] After I indicated that a direction would follow the representatives made submissions about costs. Each party seeks indemnity cost against the other, both on the basis that the other's conduct caused unnecessary costs. However in my view neither party is entitled to costs and both can fairly be criticised for their contribution to this waste of time.

[6] The object of the Employment Relations Act 2000 is to build productive employment relationships through the promotion of good faith including by promoting mediation as the primary problem solving mechanism and by reducing the need for judicial intervention. Good faith requires parties to be active and constructive in maintaining a productive employment relationship in which the parties are, amongst other things, responsive and communicative. Part 10 of the Act includes the object to establish procedures and institutions that support good faith and that recognise that employment relationships are more likely to be successful if problems are resolved promptly by the parties themselves including with expert problem solving support such as mediation. It is incumbent on every representative who advises employers and employees to do so in a way that ensures adherence to these objects. I will mention some ways in which this requirement was not met in this case.

[7] There is usually little point in making an application to the Authority limited to seeking only a direction to mediation. The limited application resulted in a reply largely devoid of the respondent's view of the facts relating to the underlying problem. As happened here the focus becomes whether one party was obstructive to mediation or the other jumped the gun, rather than resolving the problem. An application for urgency should be properly supported by an explanation of the grounds. This was absent here. Overall this case looks like a tactic to use the

Authority's duty to direct parties to mediation (with limited exceptions) to progress *without prejudice* discussions. That is inconsistent with the object of reducing judicial intervention.

[8] As to the respondent it is difficult to understand why there was a delay from mid September 2008 until 3 November 2008 in proving a substantive written response to the applicant's grievances. There is an explanation for only a limited amount of this delay. Indeed it took the respondent nearly a month to reply even from the date it received the statement of problem. A prompt response would have avoided the proceedings as framed or could have deflated the largely tactical order sought by the statement of problem. It is difficult to escape the conclusion that the respondent wanted to slow down dealing with the underlying problem for tactical reasons, a position that falls short of meeting the objects of the Act.

[9] Given the contribution of both sides to the waste of time involved with these proceedings the fairest course is to leave costs to lie where they fall.

Philip Cheyne
Member of the Employment Relations Authority