

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 315
5315212

BETWEEN PAUL EVANS-MCLEOD
 Applicant

AND TELECOM NEW ZEALAND
 LIMITED
 Respondent

Member of Authority: K J Anderson

Representatives: P Evans-McLeod, In person
 J Rooney, Counsel for Respondent

Investigation: On the papers

Determination: 19 July 2011

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Mr Evans-McLeod, seeks compensation “for loss of income” that he claims has been brought about because, he alleges, Telecom New Zealand Limited (Telecom) has deliberately “blacklisted” his name within the telecommunications industry; hence Mr Evans-McLeod alleges that he has been unable to obtain employment in the industry following the termination of his employment with Telecom. But Telecom says that that the Authority does not have jurisdiction under section 161 of the Employment Relations Act 2000 (the Act), because the claim being pursued by Mr Evans-McLeod is not an employment relationship problem.

Background

[2] Mr Evans-McLeod is a former employee of Telecom. His employment terminated on or about 20th August 2009; brought about by his resignation. The

parties consequently entered into a settlement agreement signed by a mediator pursuant to section 149 of the Employment Relations Act 2000 (the Act).

[3] Mr Evans-McLeod then sought to pursue a personal grievance action before the Authority. The outcome was that via a determination¹ the Authority found that Mr Evans-McLeod was barred by s. 149 of the Act from pursuing a personal grievance. In arriving at this conclusion, the Authority also found that:

[24] I find that both parties freely entered into the final and binding Record of Settlement in which they agreed, among other things, that Mr Evans-McLeod would resign and Telecom would pay him a sum of money.

[25] Further there is no evidence that Mr Evans-McLeod's resignation resulted from any inappropriate or unlawful action on Telecom's part or by anybody else. Mr Evans-McLeod was represented by an experienced officer of the EPMU and entered into the Record of Settlement after mediation and subsequent negotiation with the assistance of the mediator.

[4] One reasonably could have anticipated that the explicit determination of the Authority (above) should have been the end of the litigation path for Mr Evans-McLeod. However, pursuant to the provisions of the Privacy Act 1993, Mr Evans-McLeod has since obtained information that Telecom has "marked" his personnel file "*do not re-employ.*" Mr Evans-McLeod alleges that he has been "blacklisted" by Telecom and that he is unable to obtain re-employment in the telecommunications industry, hence his claim for a remedy from the Authority in this matter.

Determination

[5] While Mr Evans-McLeod has provided the Authority with considerable material that he believes supports his attempt to re-litigate matters with Telecom, unfortunately the Authority is unable to give consideration to any of this material. This is because the Authority does not have jurisdiction to do so. Pursuant to section 161(1) of the Act:

The Authority has exclusive jurisdiction to make determinations **about employment relationship problems** generally, including – (Emphasis added)

(a) ...

(b) ...

¹ AA 187/10, Member Campbell, 26 April 2010.

[6] The insurmountable problem that Mr Evans-McLeod has, in regard to pursuing the current claim, is that he is no longer in an “*employment relationship*” with Telecom² and hence it follows, that he is not able to pursue any further actions within the Employment Relations Authority relating to his past employment with Telecom. This is because the Authority does not have jurisdiction to hear any further claims from him. Therefore, the current claim is dismissed for want of jurisdiction.

[7] Given that Mr Evans-McLeod continues to pursue what appears to be little short of a vexatious and misguided campaign of litigation against Telecom, I would trust that he now understands that it is just not possible for him to bring any other matters to the Authority pertaining to his past relationship with Telecom.

Costs: Costs are reserved. The respondent has 28 days from the date of this determination to file and serve submissions with the Authority. The applicant has a further 14 days to file and serve submissions.

K J Anderson
Member of the Employment Relations Authority

² And has not been since on or about 20th August 2009.