

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** Rex Field (Applicant)  
**AND** AB Equipment Limited (Respondent)  
**REPRESENTATIVES** Phillip Drummond for the Applicant  
Eska Hartdegen for the Respondent  
**MEMBER OF AUTHORITY** P R Stapp  
**SUBMISSIONS IN WRITING** 15 & 29 November 2006 and 1 December 2006  
**DATE OF DETERMINATION** 15 December 2006

**OUTSTANDING REMEDIES AND COSTS DETERMINATION OF THE AUTHORITY**

**Application**

[1] Remedies for lost financial benefit and costs were reserved by the Authority in *Field v AB Equipment Limited*, WA 154/06 dated 6 November 2006, P R Stapp, (unreported). Leave was reserved for the parties to return to the Authority if they were not able to settle the outstanding matters. The Authority is now required to determine the matters upon written submissions being completed.

[2] Mr Field is seeking a lost benefit for the employer's contribution to superannuation which he says he could reasonably have expected to receive had the personal grievance not arisen. He is seeking the amount of \$6,671.46 from the "*Employer's Account*" since he was a member of the company's superannuation scheme-namely the Hellaby Superannuation Scheme.

[3] He is also seeking \$6,000 costs as a contribution to reasonable costs incurred for the Authority's investigation and a second mediation directed by the Authority.

**Background**

[4] At the time of Mr Field's dismissal (as at 13 February 2006) AB Equipment Limited 's ("AB's") contribution to the superannuation scheme was \$6,671.46 in the "*Employer's Account*". The issue is whether Mr Field could reasonably have expected to obtain the benefit of the employer's contribution if the personal grievance had not arisen.

[5] Mr Field had been part of the employer's superannuation scheme for 2 years and 8 months at the time of his dismissal. He says he intended to stay in the employment of the company.

[6] Where an employee leaves by resigning Hellaby Holdings Limited in the superannuation scheme recommended a policy for an employer to pay out on the “*Employer Account*” as follows.

<b>Years of Fund Membership</b>	<b>% of Employer Account</b>
4 or less	Nil
5	10%
6	20%

[7] Mr Field was not entitled as of right to the funds because he had not worked with the company for the recommended 5 years for an entitlement. He had 2 years and 4 months to run to be eligible for a discretionary payout if he left. There was no evidence that Mr Filed intended to leave his employment. However, he could not remain in the scheme because he was dismissed.

### **Determination**

[8] AB says that Mr Field would not have remained in the company’s employment for another period of 2 years and 4 months. It submitted that it is entirely discretionary not to pay the “*Employer’s Account*” superannuation contribution to a leaving employee. It says the policy and practice has been consistently applied where employees have left the company’s employment for reasons other than for retirement, disablement or retrenchment or ill health. No examples or supporting evidence was supplied. Mr Field did not challenge this and no comment was made in submissions on his behalf about the point.

[9] It is reasonable to consider that “*but for*” the applicant’s dismissal he would more than probably likely remained in the company’s employment having regard to the length of time being considered here, that is 2 years and 4 months.

[10] AB has relied upon Matthew Richards’ evidence by affidavit filed for the Authority’s substantive investigation meeting that Mr Field was looking for another job and would leave AB as soon as he could. I accept the submission made by Mr Drummond that the weight given to the affidavit should be limited and for the affidavit to be treated cautiously. Mr Richards was not able to be available for the Authority’s investigation meeting. His affidavit is not specific enough on detail. Matters were not raised to be put to Mr Field during the Authority’s investigation meeting.

[11] The scheme provided for any employee leaving to be entitled to a retiring benefit, a death benefit, a disablement benefit and a leaving service benefit. The latter is relevant here and applies to the “*Employer Account*” as the employer in its absolute discretion determines.

[12] Mr Field is aged 55 years. He has said that the scheme was “*a significant benefit to me, particularly at my stage of life*”. I have decided not to award him the “*Employer Account*” contribution because:

- It does involve an assessment of whether or not he would likely have worked for another 2 years and 4 months. I agree that it was probably more than likely he would have worked for some time if his dismissal had not occurred despite what Mr Richards says.
- The superannuation policy is a discretionary policy but not absolute given that there is provision for “*disablement or retrenchment or ill health*”.
- There is no reason to disregard or not to give some recognition to the submission that the employer as a matter of policy does not pay out to a

leaving employee where employees have left the company's employment for reasons other than for retirement, disablement or retrenchment or ill health.

- Mr Field gave no indication that he was going to retire as opposed to continue working for AB that could have been for an indefinite period.
- The existence of the Hellaby recommendation in the superannuation fund scheme.
- I have also balanced that if Mr Field remained for the extra 2 years and 4 months to reach the recommended entitlement he would have had a prospect of qualifying. However, any amount for the time claimed would be speculative.

[13] It is my decision to dismiss the claim.

### **Costs Application**

[14] Mr Field is entitled to costs to follow the event. His costs include \$2,000 for a second attempt at mediation. He is claiming \$6,000 that I find is entirely reasonable except for the inclusion of mediation costs. Attendance at mediation is a preferred alternative to an investigation process and as a matter of public policy the costs are usually required to be met by the parties. Another Authority member's decision to refer the parties back to mediation was an option available under s 159 of the Act, and on the presumption that there was an opportunity for the matter to be settled, the issues narrowed or agreements reached that would assist the investigation process, there is no good reason for me to depart from the Authority's usual practice not to award costs for mediation. Therefore it is my decision AB Equipment Limited is to pay Mr Rex Field \$4,000 costs as a contribution to his reasonable costs of \$9,000. In addition AB Equipment is to pay Mr Field the \$70 filing fee and \$430 disbursements.

P R Stapp  
Member of the Authority