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ORDER PROHIBITING PUBLICATION
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TO IN THIS DETERMINATION

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Anne Marie Fisher (Applicant)
AND Xpressions Fashion Clothing Limited (Respondent)
REPRESENTATIVES David Perreaux for the Applicant
Elaine Flynn company director for the Respondent
MEMBER OF AUTHORITY P R Stapp
INVESTIGATION MEETING Napier, 27 June 2005
DATE OF DETERMINATION 1 July 2005

DETERMINATION OF THE AUTHORITY

Background

[1] A statement of Problem dated 15 December 2004 was filed on behalf of the applicant before the matter had been to mediation. The Authority's support staff liaised with the parties' representatives (the respondent was represented by a lawyer at the time) and agreement was reached for the parties to attend mediation services with the Department of Labour.

[2] In the meantime the applicant's representative agreed to extend the time for filing a statement in reply, until after mediation, since the only reason for filing in the Authority was to try and get the respondent to mediation. The applicant's representative also agreed to file an amended statement of problem following mediation if the issues were not settled. The Authority consented to the arrangements.

[3] It was left for arrangements to be made for the parties to attend mediation. Mrs Flynn withdrew from the first mediation arrangements on 16 February 2005 because she says she was not medically fit to attend. The Authority agreed to wait for new arrangements but not indefinitely.

[4] Further arrangements were made for the parties to attend mediation on 28 February and 9 May 2005. The respondent cancelled without explanation.

[5] Upon enquiries from the applicant's representative about what should happen I decided to give notice on 10 May 2005 for an investigation meeting to take place in Napier on 27 June 2005.

The proceedings

[6] This matter has never been to mediation. I decided to proceed without directing the matter to mediation because all parties were present and an investigation would help and assist bring the problem to a conclusion. Furthermore I was not satisfied that mediation would involve the respondent cooperating or even turning up and might cause the applicant unnecessary expense and further delays.

[7] A statement in reply had not been filed by the time of the investigation meeting and leave to respond and reply was required. This raised a difficulty in as much as the statement of problem lacked details and specifics of the facts of the problem. A bundle of documents including correspondence was made available by the applicant's representative. This did not include any wage and time records despite requests to the respondent for such records. Since there was some initial agreement between the parties' representatives on the paperwork and that the documents produced identified the issues and no amended statement of problem had been filed because mediation had not taken place, I decided to permit the respondent the right to reply.

[8] I considered that the documents that had been provided by the applicant's representative should not have surprised the respondent since they included correspondence between the parties.

[9] The respondent's representative made representations in writing on Mrs Flynn's behalf. He said that she has been under tremendous personal stress and gave some reasons that I do not intend to disclose publically. I note that despite these representations that Mrs Flynn and her representative took no initiative to make or even suggest any alternate arrangements. There was no supporting documentation produced that related to Mrs Flynn's claimed circumstances. Despite cancelling mediation services the respondent made no attempt to provide any undertakings and make any suggestion for alternative mediation services in a reasonable timeframe. Although I accept that Mrs. Flynn may have had good reason for cancelling mediation I explained that her omissions to make some alternate suggestions for arrangements left the situation open to being interpreted as suspicious. Indeed Mr Flynn attended the Authority's investigation to support and assist her and they were ready to proceed.

[10] However, I did invite both parties to spend some time before the start of my investigation meeting to endeavour to resolve the matter together and without my involvement. They agreed. Upon me retiring from the room the parties met together.

Request for a consent determination

[11] After some time during the morning I was advised that the parties had settled and upon reconvening the investigation meeting I was handed up signed and confidential terms of settlement. The parties agreed that they be recorded by way of a consent order. The terms as agreed and signed remain on the Authority's file and copies have been provided to both parties.

Consent order

[12] Consistent with the parties' agreement this determination confirms in writing the orders made by the Authority at the investigation meeting held in Napier on 27 June 2005 to record the parties' settlement as a consent order determination.

[13] The employment relationship problem related to the reasons for the employment relationship coming to an end and a request for time and wages records.

[14] I was satisfied that the terms of settlement signed by the parties and confirmed in front of me resolved the employment relationship problem. The Authority was satisfied that the terms as agreed should be an order of the Authority and by consent so ordered.

[15] By consent I also agreed to prohibit the publication of the terms in order to preserve the parties' agreement for the terms to be confidential. By consent this order was made.

P R Stapp
Member of the Authority