

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 467
5395915

BETWEEN FRIEDRIECH GOSTMANN
Applicant

A N D INDEPENDENT
REFRIGERATION AND
ELECTRICAL LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: Eska Hartdegen, Counsel for Applicant
Susan-Jane Davies, Counsel for Respondent

Investigation Meeting: 29 October 2012 at Tauranga

Submissions Received: 16 November 2012 from Applicant
26 November 2012 from Respondent
26 November 2012 from Applicant
10 December 2012 from Applicant
13 December 2012 from Respondent

Date of Determination: 19 December 2012

DETERMINATION OF THE AUTHORITY

- A. Independent Refrigeration and Electrical Limited's (Independent Refrigeration's) dismissal of Friedrich Gostmann was substantively and procedurally unjustified.**
- B. Independent Refrigeration is ordered to pay Mr Gostmann lost remuneration of \$5,304 and \$5,000 distress compensation for his unjustified dismissal personal grievance.**
- C. Mr Gostmann misrepresented himself during the pre-employment stage of his employment.**

D Independent Refrigeration's counterclaim does not succeed.

Employment relationship problem

[1] Independent Refrigeration is a medium-sized business based in Whakatane which is part owned and operated by Mr Gordon Faber and his wife Mrs Glynis Faber. Independent Refrigeration carries out commercial refrigeration installations, repairs and maintenance and commercial air conditioning installations, repairs and maintenance. It employs one apprentice, five electrical/refrigeration engineers and two office staff.

[2] Mr Gostmann and his wife moved to New Zealand from South Africa so they both require work visas to work in New Zealand. Mr Gostmann started work on 05 March 2012 after obtaining a work visa to work in Whakatane for Independent Refrigeration as an Air Conditioning and Refrigeration Technician. His work visa is valid until 30 March 2014 for the specified position, employer, and location only. Mrs Gostmann currently works in Auckland as an office administrator. She was able to get a work visa because of her husband's work visa.

[3] On 28 August 2012 Mr Faber gave Mr Gostmann the option of resigning or being dismissed. The upshot of this discussion was that Mr Gostmann was summarily dismissed that day.

[4] Mr Gostmann's dismissal creates a problem with his immigration status. His visa requires him to work for Independent Refrigeration. If Mr Gostmann is not reinstated and if he is unable to obtain a work visa with a new employer there is a risk he and his wife may have to leave New Zealand. Mrs Gostmann's visa is also affected because her right to work is based on Mr Gostmann's visa.

[5] Mr Gostmann claims his dismissal was substantively and procedurally unjustified. He seeks reinstatement together with lost remuneration, interest and distress compensation.

[6] Mr Gostmann also claims Independent Refrigeration breached the procedural fairness provision in his employment agreement and he wants a penalty to be imposed for this breach. Mr Gostmann claims Independent Refrigeration breached its good faith obligations and he seeks a penalty be imposed for that breach. Mr Gostmann asks that any penalties be paid to him personally and not the Crown.

[7] Independent Refrigeration admits Mr Gostmann was summarily dismissed. It acknowledges Mr Gostmann's dismissal was procedurally unjustified because it did not comply with any of the four tests in s.103A(3) of the Employment Relations Act 2000 (the Act) or with its statutory good faith requirements under s.4(1A) of the Act.

[8] However, Independent Refrigeration says its dismissal of Mr Gostmann was substantively justified because he misrepresented himself at the pre-employment stage and his performance was substandard.

[9] Independent Refrigeration counterclaims against Mr Gostmann for \$5,101.70 being the losses it says it incurred as a result of Mr Gostmann's pre-employment misrepresentations and poor performance.

Issues

[10] The following issues need to be determined:

- (a) Was Mr Gostmann's dismissal substantively justified?
- (b) What remedies should Mr Gostmann be awarded?
- (c) Should Mr Gostmann be awarded interest?
- (d) Should a penalty be imposed on Independent Refrigeration for its breach of Mr Gostmann's employment agreement?
- (e) Should a penalty be imposed on Independent Refrigeration for its failure to comply with its statutory good faith obligations?
- (f) Did Mr Gostmann misrepresent himself at the pre-employment stage?
- (g) If so, did any misrepresentations cause Independent Refrigeration to suffer loss?
- (h) Can Independent Refrigeration recover any of its losses from Mr Gostmann?

Was Mr Gostmann's dismissal substantively justified?

[11] Independent Refrigeration says Mr Gostmann's summary dismissal was substantively justified because he was incompetent in refrigeration. It says his

representation that he was a refrigeration technician with 15 years experience was not borne out by his performance on the job.

[12] Justification is to be determined in light of the s.103A justification test in the Act. This requires the Authority to assess “whether the employer’s actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal [...] occurred.”

[13] A fair and reasonable employer could not dismiss an employee for poor performance unless it has first attempted to improve the employee’s performance by way of a performance management or monitoring process. A fair and reasonable employer could not summarily dismiss an employee for poor performance because such dismissal is not a trust and confidence issue so it must be on notice.

[14] A fair and reasonable employer could also not dismiss an employee for poor performance unless the employee has been subject to a graduated warning process, which has clearly put the employee on notice that their ongoing employment is in jeopardy.

[15] Mr Gostmann was not subjected to a graduated warning process and received no warnings for poor performance before he was dismissed. Mr Gostmann was not put on notice his ongoing employment was in jeopardy if he did not meet specific performance standards. Nor was Mr Gostmann the subject of a performance management/monitoring process to lift his performance before he was dismissed.

[16] I find Independent Refrigeration is unable to substantively justify Mr Gostmann’s dismissal under s.103A in the Act.

What remedies should Mr Gostmann be awarded?

Reinstatement

[17] Mr Gostmann seeks reinstatement. Mr Gostmann says that by the end of his employment he was “*far more capable of doing the work*” than he had been at the beginning. He told the Authority that “*with some further training where needed, and*

the experience I have gained over the last six months¹, I will be competent to do the work”.

[18] Mr Gostmann says he and his wife are liable to be deported if he is not reinstated because his work visa is no longer valid and he has not been able to find another job. Mr Gostmann says that if he is not reinstated then his wife’s work visa will be in jeopardy. He says his wife is unlikely to be granted her own work visa² because her current administration job is unlikely to qualify her for the granting of a work permit herself. Mr Gostmann says it would cause them substantial hardship if they were to be deported because they have almost no money left in South Africa.³

[19] Mr Gostmann acknowledges that if he was reinstated he needed more training on electrical work and design and to make up electrical boards.

[20] Ms Hartdegen submits that weighing up the impact on the employer of reinstating Mr Gostmann versus the impact on him of not reinstating him means it would be reasonable to reinstate. She submits Mr Gostmann should be given any necessary training and that performance measures can be put in place to monitor and if necessary address his performance.

[21] From 01 April 2011 reinstatement is no longer the primary remedy for a dismissal grievance. Reinstatement has no more or less prominence than any other remedies.⁴ Under s.125 of the Act the Authority may grant reinstatement if it considers it is “reasonable and practicable” to do so.”

[22] Whether it is practicable to reinstate Mr Gostmann requires “involves a balancing of the interest of the parties and the justices of their cases with regard not only to the past but more particularly to the future.”⁵ The Court of Appeal in *Lewis v*

¹ I note Mr Gostmann worked for Independent Refrigeration for less than 6 months.

² I.e. a work visa not linked to Mr Gostmann as the primary work visa holder.

³ The Gostmann’s did not explain how that evidence was consistent with the undertaking provided in support of Mr Gostmann’s interim reinstatement application in which he undertook they had sufficient funds in South Africa to meet a order of the Authority to reimburse any money paid to Mr Gostmann if he was reinstated. The Authority’s question about that went unanswered.

⁴ *Angus v Ports of Auckland (No 2)* [2011] NZEmpC 160.

⁵ *New Zealand Educational Institute v Board of Trustees of Auckland Normal Intermediate School* [1994] 2 ERNZ 414 (CA).

*Howick College Board of Trustees*⁶ held “the test for practicability requires an evaluative assessment by the decision maker” of the factors it identified in *NZEI*.⁷

[23] The Employment Court in *Angus v Ports of Auckland (No 2)*⁸ held that “the requirement for reasonableness invokes a broad inquiry into the equities of the parties’ cases.” It also recognised that the “reasonableness” requirement requires the Authority to consider the prospective effects of a reinstatement order on the parties and on others who may be affected.⁹

[24] The onus of proving on the balance of probabilities that reinstatement is not practicable rests on Independent Refrigeration. I find that it has discharged that onus.

[25] Independent Refrigeration produced credible evidence to support its view that Mr Gostmann is not capable of doing the role he was employed to do safely or competently. Mr Gostmann’s colleagues all expressed safety concerns about his work and said they did not want to work with him.

[26] I am satisfied reinstatement is not practicable or reasonable. Over the course of his employment with Independent Refrigeration Mr Gostmann failed to demonstrate the skills or experience expected of a refrigeration technician with 15 years’ experience.

[27] I am satisfied on the balance of probabilities from the evidence produced by Independent Refrigeration that Mr Gostmann was not competent to undertake refrigeration work unsupervised. That makes reinstatement impracticable and unreasonable because Mr Gostmann was employed as an experienced refrigeration engineer, not as a trainee.

[28] I accept that Independent Refrigeration (and Mr Gostmann’s colleagues) genuinely believe, on reasonable grounds, that Mr Gostmann does not have the requisite skills to perform the job he was employed to do and has proven to be incapable of learning the required skills on the job, despite appearing to have the necessary qualifications. Mr Gostmann admits to some errors and acknowledges he would need more training if reinstated.

⁶ [2010] NZCA 320.

⁷ Ibid 5.

⁸ Ibid 4.

⁹ Supra.

[29] I consider it is not reasonable for Independent Refrigeration to have to try to upskill Mr Gostmann in circumstances where he has irretrievably lost the confidence of Independent Refrigeration and his colleagues.

[30] I am concerned that, although Mr Gostmann represented he was a qualified and experienced refrigeration engineer with 15 years' experience, the evidence demonstrated he lacked the basic knowledge that someone with his experience would be expected to have. I am satisfied this lack of knowledge cannot be explained away on the basis of New Zealand specific differences.

[31] There is also a question about Mr Gostmann's qualification. He admitted his air conditioning refrigeration qualification involved two 10 day part time courses involving half days only. The New Zealand qualification is three years full time study with extensive practical requirements.

[32] It is of concern that Mr Gostmann admits he wrote the reference he proffered from his former employer in South Africa and asked an office person who had no personal knowledge of his actual work to sign it on behalf of his former employer. His explanation that he could not contact someone in the company who had personal knowledge of his work skills and experience did not seem credible. Mr Faber had no trouble contacting Mr Spence (who had employed Mr Gostmann and who was also a director of the company) after Mr Gostmann had been dismissed.

[33] Mr Faber presented hearsay evidence from the office person who had signed Mr Gostmann's reference. He said the office person told him Mr Gostmann was just a handyman for the company and used to assist technicians with odd jobs but that he did not do any refrigeration or air conditioning work by himself. This person also disclosed that Mr Gostmann had done a quick 10 half day qualification course for his immigration papers for New Zealand but that his qualifications were not up to their (the South African) company's standard.

[34] Mr Faber reports that he also spoke to a receptionist at Mr Gostmann's former employer who confirmed Mr Gostmann had been employed as a handyman, which is more hearsay evidence.

[35] Mr Faber also reported hearsay evidence from Mr Spence who allegedly confirmed Mr Gostmann was never an engineer with the company but was only ever a handyman who would be sent out to do odds and ends, like change fan motors and

add some gas. Mr Spence allegedly said Mr Gostmann was used by his former employer as a labourer to clean and service units.

[36] Mr Faber also contacted Mr Gostmann's named referee who allegedly told him Mr Gostmann had worked as a general hand for his former employer changing fridge cabinets and doing odd jobs. This was again hearsay. Mr Gostmann's CV records this referee as being employed by a cool room and display refrigeration manufacturing company in South Africa when he was not. The referee worked for a supermarket.

[37] Although I treat hearsay evidence with a high level of caution, the Authority under s.160(2) of the Act "may take into account such evidence and information as in equity and good conscience it thinks fit, whether strictly legal evidence or not."

[38] I consider the alleged hearsay evidence from Mr Gostmann's personal referee, the person who signed his written reference, the receptionist of his former employer and the director of his former employer is relevant material which should be considered. The theme that develops from this untested hearsay evidence consistently suggests that Mr Gostmann may not have been completely forthcoming about the nature of his employment with his former employer in South Africa.

[39] Other than denying he had worked as a labourer/handyman, Mr Gostmann failed to produce evidence contradicting Mr Faber's hearsay evidence. Mr Gostmann's evidence was that he had a very good relationship with his South African employer so it should have been easy for him to have obtained written confirmation of his job title, skills, experience, and nature of his role/duties in South Africa. It is curious he elected not to do so.

[40] I consider the hearsay evidence is to some limited extent corroborated by other evidence I heard. Mr Gostmann did confirm that his sole qualification involved two 10 day half day courses. He also made basic errors whilst employed by Independent Refrigeration and he was unable to learn core refrigeration skills on the job which strongly indicates he does not have the skill and experience of someone who has worked in the industry for 15 years.

[41] The suggestion that Mr Gostmann had a labourer/handyman role with his former South African employer therefore has a ring of credibility to it. It would also explain why Mr Gostmann made basic errors and appeared not to understand core

basic tasks which an engineer employed anywhere in the world should have known. These concerns are factors which weigh against reinstatement.

[42] I heard evidence about an incident where Mr Gostmann told the apprentice that cables had been isolated when they had not. When the apprentice went up the ladder and was about to start moving the cables the cables short circuited. Mr Gostmann had not isolated the circuit, which could potentially have caused the apprentice to be electrocuted. Mr Gostmann denied this incident but I am satisfied it did occur as reported to me by the apprentice.

[43] I do not accept Mr Gostmann's suggestion that the apprentice made this incident up. The apprentice had no personal issues with Mr Gostmann so had no reason to lie. The apprentice raised the incident with other staff when it happened (well before Mr Gostmann was dismissed) and he had a detailed recall of the incident. It is an event which would have stuck out in the apprentice's mind because his safety had been jeopardised. It was of concern that Mr Gostmann appeared to brush this incident off as a non event, when he had in fact caused a potentially very serious hazard.

[44] I consider that the nature of Mr Gostmann's role is such that it would be impractical to reinstate him. If he returned to work Independent Refrigeration would have to ensure that he always worked alongside another staff member who could pick up any potential problems with his work before they created safety issues. As a small business it does not have the resources to devote that level of supervision and oversight to someone it employed as an experienced engineer with 15 years experience. It is unreasonable to place that burden on a company of Independent Refrigeration's size.

[45] Mr Gostmann was paid as an experienced person so it is reasonable to expect him to work unsupervised. I consider it impractical to reinstate Mr Gostmann in circumstances where it is questionable whether he is safe to work alone.

[46] Mrs Faber identified 14 errors which occurred during the course of Mr Gostmann's employment and which she claims cost the company over \$5,000 to remedy. Although Mr Gostmann denies responsibility for costing the company money, under close questioning he eventually admitted to eight incidents in which he accepted he may have been at fault.

[47] Ms Davies calculates these 8 incidents for which Mr Gostmann admitted some responsibility as costing Independent Refrigeration in excess of \$2,200. I consider the number and extent of errors that occurred with Mr Gostmann's work make reinstatement unreasonable.

[48] Mr Gostmann recognised that he needed more training in flares, dairy vats and electrical. I consider it unreasonable to reinstate Mr Gostmann back into a small business in circumstances where he had been employed as an experienced technician, not as someone who needed extensive training, coaching or supervision.

[49] The evidence satisfied me that there is a real question mark about whether Mr Gostmann is capable of undertaking what Mr Faber described as "*the basics*". Mr Gostmann was unable to explain why he continued to make basic errors and why he did not know basic elements of his job when he claimed to have 15 years of experience in the industry.

[50] Mr Gostmann's explanation that he had worked on "*the big stuff*" and therefore did not know "*the small stuff*" did not ring true because the same principles apply. If he had a thorough grounding in the industry (as his CV suggests) then the scale of the jobs should not have caused him any difficulty. I consider it more likely that Mr Gostmann's difficulties arose because he did not have the skills or knowledge commensurate with someone who had been in the industry for 15 years.

[51] I decline reinstatement on the grounds it is not practicable or reasonable to reinstate Mr Gostmann.

Distress compensation

[52] Mr Gostmann says he was shocked and devastated by his dismissal and found the whole experience demeaning and humiliating. He says it has been stressful, distressing and traumatic. It has adversely affected his appetite and sleep.

[53] I consider that an award of \$5,000 is appropriate to compensate Mr Gostmann for his distress. I order Independent Refrigeration to pay Mr Gostmann \$5,000 under s.123(1)(c)(i) of the Act to compensate him for the humiliation, loss of dignity, and injury to feelings his unjustified dismissal caused him.

Did Mr Gostmann mitigate his loss?

[54] Independent Refrigeration claims that Mr Gostmann failed to mitigate his loss and therefore should not be awarded any lost remuneration. Mr Gostmann provided the Authority with a list of 14 companies which he said he had approached for work. I am therefore satisfied that he attempted to mitigate his loss so should not be deprived of lost remuneration.

Lost remuneration

[55] Mr Gostmann has been out of work since his dismissal on 28 August 2012 and has not received any income since then. He claims \$10,608 lost remuneration being 10 weeks and two days lost remuneration.¹⁰ I am satisfied Mr Gostmann lost remuneration as a result of his unjustified dismissal so he is entitled to recover that amount.

[56] I order Independent Refrigeration under s.128(2) of the Act to pay Mr Gostmann \$10,608 to compensate him for the remuneration he has lost since his dismissal. However, this amount is to be reduced on the grounds of contribution.

Should remedies be reduced on the grounds of contribution?

[57] Section 124 of the Act requires me to consider the extent to which Mr Gostmann contributed towards the situation which gave rise to his dismissal grievance and if required to reduce remedies accordingly.

[58] I find Mr Gostmann did contribute towards his dismissal grievance because clearly his work was not up to the required standard. He also made a number of quite basic but serious and costly errors. I consider his award of lost remuneration of \$10,608 should be reduced by 50% to \$5,304 reflect his contribution. No reduction is to be made to his award of distress compensation. His interest claim has been affected (see below).

Should Mr Gostmann be awarded interest?

[59] Mr Gostmann claims interest on his lost remuneration. Interest is discretionary. I decline to award interest because I do not consider it in the interests of

¹⁰ 40 hour per week x \$26 per hour.

justice to do so having regard to the high level of contribution Mr Gostmann had to the situation that gave rise to his dismissal grievance.

Should a penalty be imposed on Independent Refrigeration for its breach of Mr Gostmann's employment agreement?

[60] Clause 16.1 of Mr Gostmann's employment agreement requires his employer to "*observe the rules of procedural fairness*". Independent Refrigeration breached Mr Gostmann's employment agreement by dismissing him without having regard to procedural fairness requirements. However, I decline to impose a penalty for this breach because it forms part of Mr Gostmann's successful unjustifiable dismissal claim.

Should a penalty be imposed on Independent Refrigeration for its failure to comply with its statutory good faith obligations?

[61] Independent Refrigeration breached its good faith obligations to Mr Gostmann because it failed to provide him with access to information relevant to its decision about his ongoing employment which deprived him of the opportunity to comment on it before he was dismissed.¹¹

[62] Under s.4A of the Act a penalty may be only be imposed for certain breaches of good faith which meet the requirements of that section. The evidence did not satisfy me that any of the penalty requirements in s.4A of the Act were met, so I decline to impose a penalty for Independent Refrigeration's breach of good faith.

Did Mr Gostmann misrepresent himself at the pre-employment stage?

[63] Independent Refrigeration claims Mr Gostmann seriously misrepresented himself when he filed out his job application form and when he was interviewed by Mr Faber.

[64] Independent Refrigeration claims Mr Gostmann misrepresented his situation when he answered "no" to a question about whether he had any obligations that could interfere with his work attendance or performance. It says he should have disclosed he had a long term lease on a property in North Shore; his wife was a student in

¹¹ Contrary to requirements of s.4(1A)(c)(i) and (ii) of the Act.

Auckland; and that he had money worries because his son had incurred significant university fees.

[65] Before accepting the offer Mr Gostmann did disclose to Mr Faber he and his wife lived in Auckland and had a lease on rental accommodation which expired in October 2012. Mr Gostmann also informed Mr Faber that his (Mr Gostmann's) wife had been unable to find work in Whakatane so would not move there until she did.

[66] When Mr Gostmann applied for the job with Independent Refrigeration it was the Gostmann's intention to live in Whakatane together. Mrs Gostmann stopped studying after Mr Gostmann obtained employment because once he got his work visa that allowed her to obtain a work visa too. Mr Gostmann was not personally liable for his son's university fees, although he did contribute to them.

[67] I do not consider these were matters Mr Gostmann was required to disclose on his application form because they were not reasonably likely to have adversely affected his work attendance or performance.

[68] Independent Refrigeration also claims that at the job interview Mr Gostmann said he was a qualified and experienced refrigeration engineer who "*had done everything in South Africa*" so only needed to familiarise himself with local equipment and look at technical manuals in order to be competent to go on jobs by himself. It says Mr Gostmann disclosed he had not done air conditioning installations but did not disclose that he had not serviced air conditioning units.

[69] Independent Refrigeration also says Mr Gostmann seriously overstated his skills, qualifications and experience in order to get a job. In particular:

- Mr Gostmann's CV recorded under his qualifications and professional training that he had "*apprenticeship: commercial refrigeration services, refrigeration mechanic (industrial)*" but he was unable to produce to the Authority an apprenticeship certificate.
- Mr Gostmann in his job application form under the trade/occupational qualification section listed his trade/occupational qualifications as "*trade – refrigeration mechanic (industrial)*." This turned out to be two 10 day half day courses he had done in South Africa.

- Mr Gostmann described in his employment record being employed by his former employer as a “*refrigeration engineer*” but the employment agreement he produced described his role in 1997 as “*cabinet line up fitter*”, a much more junior position.
- Mr Gostmann omitted to mention a four month gap in his employment with his former employer and was unable to provide an explanation for this during cross-examination.

[70] I am therefore satisfied on the balance of probabilities that Mr Gostmann misrepresented his skills and experience at the pre-employment stage.

Did Mr Gostmann’s misrepresentations cause Independent Refrigeration to suffer loss?

[71] Independent Refrigeration claims it incurred losses of \$5,101.70 as a result of Mr Gostmann’s misrepresentations and it seeks to recover that amount from him. It says this amount was incurred in order to fix mistakes Mr Gostmann had made or to remedy his poor workmanship. It says it absorbed those costs because it could not pass them on to its customers.

[72] I am not satisfied on the balance of probabilities that the losses Independent Refrigeration says it incurred were caused by the misrepresentations identified above.

Can Independent Refrigeration recover any of its losses from Mr Gostmann?

[73] Although the evidence established that Mr Gostmann’s performance was poor, and that he made numerous mistakes, it did not establish that he had been negligent to the standard required to enable Independent Refrigeration to recover its claimed losses from him. Mr Gostmann’s employment agreement did not contain a provision to allow Independent Refrigeration to recover from Mr Gostmann any costs it incurred as a result of his errors or poor workmanship.

[74] I also consider that the extent of losses Independent Refrigeration says it incurred may not have been as significant if it had made thorough inquiries at the pre-employment stage, including personally discussing Mr Gostmann’s employment history, skills and experience with his nominated referees. That did not occur until after he had been dismissed.

[75] Independent Refrigeration should also have questioned Mr Gostmann much more closely than it did about what work he had actually undertaken in South Africa to determine what he work he was experienced enough to be able to undertaken in New Zealand by himself. When it became evident that there were problems with Mr Gostmann's performance these should have been addressed by a proper performance management/monitoring process. Had that occurred, then the nature and extent of the problems that occurred may have been avoided or reduced.

[76] I consider Independent Refrigeration's failure to reference check Mr Gostmann, its failure to discuss the nature of his experience with him in detail, and its failure to properly performance manage him all caused or contributed to the losses it says it incurred. I therefore decline to award Independent Refrigeration the \$5,101.70 it has counterclaimed from Mr Gostmann.

Costs

[77] The parties are encouraged to resolve costs by agreement. If that is not possible Mr Gostmann is to file a costs memorandum within 14 days of the date of this determination, Independent Refrigeration is to file its costs memorandum 14 days thereafter.

[78] The Authority is likely to adopt its usual notional daily tariff based approach to costs so the parties are invited to identify any factors which they say should increase or decrease the notional daily tariff which is currently \$3,500.

Rachel Larmer
Member of the Employment Relations Authority