

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Donald Montrose Graham (Applicant)
AND Crestline Pty Limited (Respondent)
REPRESENTATIVES Tony Drake, Counsel for Applicant
Malcolm Crotty, Counsel for Respondent
MEMBER OF AUTHORITY R A Monaghan
INVESTIGATION MEETING 24, 25, and 26 January and 8 February 2005
ADDITIONAL MATERIAL RECEIVED May and June 2005
SUBMISSIONS RECEIVED 8 and 26 June, 18 August 2005
DATE OF DETERMINATION 4 October 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Donald Graham says:

- (i) he was unjustifiably dismissed by his former employer, Crestline Pty Limited (“Crestline”) in that, -
 - . his employment did not continue for the agreed minimum term,
 - . there was no substantive justification for the dismissal, and
 - . the procedure imposed in implementing the dismissal was unfair; and
- (ii) Crestline breached its obligation to act in good faith towards him; and
- (iii) Crestline owes him payment in respect of outstanding annual leave entitlements payable at the date of his dismissal.

[2] In addition to the compensation and reimbursement he seeks in respect of his personal grievance, Mr Graham seeks: damages for the breach of the obligation to act in good faith; damages in respect of the early termination of his employment agreement; and penalties for the breaches of the employment agreement and of the good faith obligation.

[3] Crestline says it was not the employer, rather the employer was its New Zealand subsidiary Search Australasia Limited (“Search Australasia”).

[4] Search Australasia has been in liquidation since Mr Graham’s dismissal. Indeed Mr Graham’s employment was terminated in association with the Crestline directors’ majority decision

not to provide further financial support to Search Australasia, and the view that, without such support, the company was insolvent. Accordingly Crestline says further that, if it was Mr Graham's employer, then its termination of his employment was justified on the ground that the closure of the Search Australasia business meant Mr Graham's position was redundant. Finally, it denies the allegations of breach of good faith and breach of the employment agreement.

The relationship between Mr Graham, Crestline and Search Australasia

[5] There is a written, and signed, employment agreement identifying Search Australasia and Mr Graham as the parties to it. However Mr Graham says the agreement does not record the true identity of the employer. I now turn to the factual background to that position.

1. Crestline approaches Mr Graham

[6] Mr Graham has made a career in recruitment. In the period immediately prior to his association with Crestline he was the managing director of a recruitment business operated by Management Recruiters New Zealand Limited ("MRNZ"). The shareholders were a company in which Mr Graham had a substantial interest, and a colleague of Mr Graham's named Carol Brown.

[7] In or about December 2001 Warren Reynolds, Crestline's managing director, convened an informal meeting of people he sought to interest in becoming part of a network of recruitment consultancies servicing Australia and New Zealand. Mr Graham was one of those people, representing a possible New Zealand arm for the network. At the time Crestline was a Perth-based business and Mr Reynolds was the managing director. He had also invited representatives from other parts of Australia to the meeting.

[8] The resulting discussions addressed, among other things, a possible structure for the proposed network. The participants would be shareholders in Crestline, and would use the Crestline brand, but a degree of independence was also important. Accordingly the discussions included the possibility of licensing arrangements between participants and Crestline. Subsequently, Crestline explored licensing, agency and other possible arrangements with the Australian representatives.

2. Heads of agreement identified

[9] As for the New Zealand arm, in March 2002 Mr Reynolds visited New Zealand and had further discussions with Mr Graham on 20 and 21 March. The result of those discussions was a written heads of agreement document dated 21 March 2002, with Crestline, MRNZ, Mr Graham and Ms Brown (representing the MRNZ shareholders) as parties. Broadly speaking, Crestline would buy MRNZ's business. Accordingly the heads of agreement dealt with Crestline's acquisition of the shares in MRNZ and the issue of shares in Crestline to the MRNZ shareholders. There was also provision for directorships in the companies, including Mr Graham's appointment as a director of Crestline, while clause 5 said this:

"Each of the Directors of Crestline and MRNZ agree to remain full time employees of Crestline or MRNZ as the case may be for a minimum of 2 years from the Settlement Date ..."

[10] According to clause 6 a more detailed agreement, incorporating the heads of agreement, was to be the subject of ongoing negotiation.

3. Discussions in April 2002

[11] Mr Graham met again with Mr Reynolds in Perth on 1 and 12 April 2002. A handwritten note Mr Graham seems to have made on 15 April 2002 records: "Don – Carol – Employees of Crestline

from 1/4/02 [salaries also recorded]" "A/L at 1/4/02 picked up by Crestline for both Don and Carol". The note also referred to other terms and conditions of employment. Mr Graham invoked the note in support of his position that his status as an employee of Crestline was agreed at the time, while Mr Reynolds said the matter was discussed but not finalised. Mr Graham accepted that Mr Reynolds said the final corporate structure for the Crestline network was not finalised, and acknowledged he knew that matter was the subject of ongoing discussion, but maintained there was no question about who his employer would be.

[12] Following those meetings Mr Reynolds asked Steven Pynt, Crestline's finance director and a practising solicitor, to prepare a shareholders' agreement as well as a standard (or generic) employment agreement to be used by all executives in the network.

[13] Mr Pynt was also closely involved in discussions about the final corporate structure of the network. At about that time no decision had been made about whether, for example, the MRNZ business would be operated as a branch of Crestline or as a subsidiary company. Mr Pynt had ongoing discussions about that matter with Ian Duff, Mr Graham's advisor and accountant. He did not raise with Mr Duff the identity of Mr Graham's employer because he assumed that would follow from the structure agreed upon.

[14] For his part Mr Graham said in evidence he believed Mr Pynt was merely recording the finer details of the agreement reached with Mr Reynolds. Mr Graham set out his understanding in a memorandum to Mr Duff, dated 22 April 2002. He stated in that memorandum: "From 1 April 2002 Carol and I become employees of Crestline." Mr Graham also referred in the memorandum to the several other matters under discussion regarding the corporate structure of the Australian and New Zealand operations. Again, however, while he recognised that aspect was still under discussion, his evidence was that he did not see its resolution as affecting the identity of Crestline as his employer. Even so, he acknowledged during the investigation meeting that the final corporate structure could affect the identity of the employer.

[15] In April or early May Messrs Pynt and Duff reached an agreement that the appropriate structure was for the MRNZ business to be operated through a subsidiary company of Crestline's. It was common ground that they worked together on the activation of what had at least until then been a New Zealand-registered shelf company. The company was named Areba Trust Limited at the time, and was renamed Search Australasia Limited. Messrs Reynolds, Pynt and Graham were registered as its directors, and Crestline as its shareholder. Crestline intended to operate the New Zealand business through it. To that end Search Australasia was to acquire the assets and assume the liabilities of MRNZ.

4. The first draft written employment agreement of May 2002

[16] By email message dated 3 May 2002 Mr Pynt circulated copies of the first draft of a shareholders' agreement, together with a first draft of the employment agreement he intended to use as the standard for all director/executives.

[17] The shareholders' agreement referred in the recitals to the shareholders and associated 'key persons' operating the business, and to key persons being 'employed by the company'. The definition clause defined 'Company' as 'Crestline Pty Limited and its subsidiaries.' Mr Graham was a shareholder and a 'key person'.

[18] The first draft of the employment agreement cited Crestline as the employer party, but did not name the employee party. Mr Pynt said he told Mr Graham the employment agreement was generic, and that once it had been settled he would amend individual terms as necessary.

[19] On receipt of the employment agreement, Mr Graham had what he called a ‘play around’ with it. He redrafted the description of Crestline as a party to include ‘Crestline Pty Ltd and its fully owned New Zealand subsidiary company Search Australasia Limited’. He did so in the recognition that the proposed shareholders’ agreement referred to ‘the Company’ as Crestline and its subsidiaries.

[20] I understand Mr Graham’s redrafted document was not sent to Crestline at the time and was produced under discovery much later. The discovery process was associated with proceedings between Crestline and Mr Graham, which were commenced in Western Australia. Mr Graham took the matter no further with Mr Pynt because, he said in evidence, his advisors told him the redraft was not necessary if Crestline was the employer. However a warning bell should at least have sounded as to the continuing accuracy of that belief in the light of the heads of agreement and the draft shareholders’ agreement.

[21] Messrs Graham and Pynt discussed Mr Pynt’s draft. Mr Pynt said in his brief of evidence:

“[17] Don raised the issue of his employer and I reiterated that the draft standard employment agreement would be amended by the insertion of Search as the employer and any provisions required by New Zealand employment law. Don told me that his lawyer had advised him that, given that Search would be the employer, the Australian company (ie Crestline) should provide a guarantee of Search’s obligations under the agreement. This is reflected in my note of the discussion where I have written ‘NZ – Search Australasia Ltd. Guanteed (sic) by Aust Company.’”

[22] Mr Pynt told Mr Graham he did not believe Crestline would give such a guarantee, but he would speak to Mr Reynolds. Mr Reynolds did not agree to give the guarantee.

[23] In fact the advice Mr Graham received, as it was explained to me, was that there was a concern that Search Australasia remained a shelf company with no assets. That much may have been true at the time, although the intended transfer to Search Australasia of MRNZ’s assets and liabilities happened eventually. Returning to the advice Mr Graham received, if Search Australasia was the employer, but had no assets and subsequently failed, then Mr Graham would have no real ability to bring a claim against it. Hence it was suggested that, for Mr Graham’s protection, Crestline should provide a guarantee.

[24] I regard the overall significance of that evidence as indicating Mr Graham should have been aware Crestline was proceeding on the basis that Search Australasia would be operating the business and would be the employer. When Search Australasia was subsequently identified as the employer in a further draft of the employment agreement, that should not have come as any surprise. Mr Graham even accepted in evidence that Mr Pynt raised the matter during their discussion in May, but said he thought Mr Pynt was merely mooting it, thinking out loud. Mr Graham did not raise with Mr Pynt his view that there was already an agreement that Crestline was the employer, and said it did not appear to him to be a major issue.

[25] Meanwhile during April, May and early June 2002 MRNZ managed Search Australasia’s income and expenses on an interim basis. Search Australasia then took over responsibility for these matters, as well as paying salaries and treating the employees - including Mr Graham - as its employees in its dealings with the Inland Revenue Department. It, not Crestline, maintained and developed MRNZ’s and new client relationships. Mr Graham was aware of all of this, but now says as far as his employment was concerned Search Australasia was merely Crestline’s paying agent. I will return to that matter when discussing the submissions on behalf of Mr Graham.

5. The written employment agreements of June 2002

A. The second draft written employment agreement of 4 June 2002

[26] On 4 June 2002 Mr Pynt circulated second drafts of the employment agreement and the shareholders' agreement. Again, the second draft of the employment agreement named Crestline as the employer party but did not name the employee party. Mr Pynt said he told Mr Graham, again, that the individual agreement would be amended to reflect Search Australasia as Mr Graham's employer.

[27] Crestline held its annual conference on 13 – 16 June 2002. During that time Mr Graham gave Mr Pynt further written comments on the second draft of the employment agreement. The comments included a provision that New Zealand law should apply, reference to matters relating to the termination provision and restraint of trade, and a reference to key person life insurance.

B. The revised written employment agreements of 13 June 2002

[28] It was common ground that on 14 June Mr Pynt tabled for discussion by all executives a revised draft of the generic employment agreement. Mr Pynt's evidence was that, on the evening of 13 June, he had also created separate and fully individualised agreements for each executive.

[29] The one he provided to Mr Graham identified Search Australasia as the employer party and Mr Graham as the employee party. Mr Graham's evidence was that he told Mr Pynt he was surprised to see Search Australasia's name on the document, and Mr Pynt replied there was an error with the company name which would be corrected. Mr Pynt denied both that Mr Graham had raised a concern about the employer party and that his reply was there was an error. The history of the discussions as I have set it out leads me to conclude it is unlikely the exchange occurred as Mr Graham said it did, and I do not accept Mr Pynt gave any indication there would be a correction to the name of the employer party in Mr Graham's agreement.

[30] I understood it also to be common ground there was a further discussion about Crestline providing a guarantee of Search Australasia's employment obligations. However the conversation was brief and, other than the fact there was no suggestion the guarantee was agreed to, the evidence was vague regarding what was actually said. It seems Mr Graham raised his wish for a guarantee, but it was lost in the rest of the discussion and no-one took the matter any further.

[31] It was also common ground that there was a discussion about amending the provision about the law applicable to the agreement, from the law of Western Australia to the law of New Zealand. Mr Graham sought the change on advice, while Mr Pynt agreed to it because he considered it appropriate since Search Australasia was the employer.

C. The final written employment agreement dated 16 June

[32] There were significant conflicts in the evidence about what happened next. Mr Pynt said he gave another complete individualised employment agreement - retaining Search Australasia as the employer and otherwise incorporating amendments as discussed - to Mr Graham to read on or about 15 June. Mr Pynt's further evidence was that Mr Graham, as was his practice, wanted time to read and consider the document. As far as Mr Pynt was aware, Mr Graham took that opportunity.

[33] Mr Graham was adamant in his denials that he was given another agreement on 15 June and that he was able to read it overnight. His evidence was that, on 16 June, Mr Pynt sought the signatures of each of the principals on their respective agreements. Mr Pynt told Mr Graham he was unable to print Mr Graham's full agreement from his laptop, so Mr Graham did not receive a copy of the final form of the agreement. Instead Mr Graham was given a copy of the execution

page only, and asked to sign that. He did so as he was in a hurry to catch a flight, asking Mr Pynt to forward a full copy to him later. Mr Graham said he trusted Mr Pynt to make the changes requested, including the replacement of Crestline as the employer.

[34] The execution page was headed 'executed by the parties' and Messrs Pynt's and Reynolds' signatures appeared under the words 'executed by Search Australasia Limited ...'.

[35] Mr Pynt was just as adamant in his denial of Mr Graham's account of the signing of the agreement. He denied any conversation about his laptop, saying he was not even using the laptop when preparing the agreements since his own office personal computer was readily accessible. A laptop was being used during the conference, but for work on budgets. There was no printer readily available for use with the laptop. Mr Pynt further denied giving Mr Graham only the execution page to sign, saying he would not do something like that. He said he considers himself an ethical lawyer, and he teaches ethics to law clerks taking courses offered by the Legal Practice Board of Western Australia.

[36] If it is accurate, Mr Graham's account suggests that Mr Pynt deliberately persisted in identifying Search Australasia as the employer party in the face of Mr Graham's refusal to agree to that, and either tricked or misled Mr Graham into signing an employment agreement (or part of one) which also identified Search Australasia as the employer party. That is a very serious matter.

[37] Mr Graham's concerns were deepened by Mr Pynt's subsequent failures to provide him with a copy of the employment agreement when requested. Mr Graham wondered why, and suggested at the investigation meeting that one possibility was Mr Pynt was concealing his failure to change the name of the employer. I do not believe that was Mr Pynt's motive, and accept the explanation he gave. He should, however, have responded to the requests.

[38] Overall I did not find anything in Mr Pynt's evidence to indicate any reason for him to behave as Mr Graham was suggesting. At the time, he had no need to. Both parties agreed in evidence that their negotiations were amicable. They did not know then that Search Australasia would not succeed, or that they would subsequently embark not only on this litigation but on the litigation in Western Australia. On the contrary, the hope and expectation was that Search Australasia would succeed.

[39] Secondly, Mr Pynt's account of the steps he took to finalise the employment agreement and obtain Mr Graham's signature accords with the practice that would be expected of someone in his position. That he would depart from such practice to the extent suggested by Mr Graham is not very likely. There was no evidence other than Mr Graham's account indicating that he did do so, and, as I have said, at the time there was no reason for him to do so. Nor was there anything in Mr Pynt's evidence to suggest the evidence was unreliable. Accordingly I prefer Mr Pynt's account of the circumstances in which the employment agreement came to be signed.

Identity of the employer

[40] Mr Graham relies on the following arguments in support of the position that Crestline was his employer despite the terms of the final written employment agreement.

1. Oral agreement in April 2002

[41] The first of Mr Graham's arguments was that the identity of the employer was settled and agreed orally with Mr Reynolds in April 2002. One difficulty with that argument is that it is not of itself sufficient to displace the effect of the written and signed agreement, since that document must

be the primary reference point, and there is nothing in it to suggest the possibility of such a variation to it.

[42] Another difficulty is with the proposition that one particular matter was agreed and finalised in April 2002, when the April discussions were not themselves final and many other aspects of the agreement were subject to ongoing negotiation. I accept that Mr Reynolds spoke at the time as if Crestline were to be the employer, but there was no evidence the parties went on to agree that the identity of Crestline as the employer was immutable regardless of the direction in which discussions progressed. On the contrary:

- (a) the heads of agreement and draft shareholders' agreement contemplated respectively that Mr Graham would remain an employee of MRNZ for two years from the settlement date, and that key employees such as Mr Graham would be employed by 'the Company' being 'Crestline and its subsidiaries'; and
- (b) Mr Graham knew that the corporate structure was not finalised and was to be the subject of ongoing discussions; and
- (c) Mr Graham knew the ongoing discussions included whether the New Zealand business would be operated as a branch of Crestline or a subsidiary of it.

[43] Against that background I do not accept that Mr Graham was entitled to draw the conclusion that the discussions of April 2002 were the end of the matter as far as the identity of the employer was concerned.

2. The draft employment agreements

[44] In the light of the above position, it is not surprising that Mr Graham would seek to rely on the apparent identification of Crestline as the employer in early draft employment agreements. However I accept that Mr Pynt told him the drafts were for a standard agreement to apply to all executives. I do not accept that the drafts support the proposition that the parties intended Crestline to be the employer all along.

3. Non est factum

[45] Counsel for Mr Graham submitted that Mr Graham was entitled to rely on the doctrine of non est factum for the signed employment agreement to be declared void. For present purposes I will adopt the following summary of the essential points of the doctrine:

- "1. The person raising the plea (the proponent) must have signed the document believing it to have a particular character or effect.
 - 2. The document must in reality have a radically different character or effect thus creating a wholly different result from that which was understood by the proponent.
 - 3. The proponent's mistaken belief must have resulted from an erroneous explanation or description of the document given to him by someone else.
 - 4. The proponent must be able to show that, notwithstanding his error, he acted with all reasonable care in the circumstances.
 - 5. If the proponent's mistaken belief arises because, acting in reliance upon a trusted advisor such as a solicitor, he did not take steps to read and understand the document prior to signing it, the plea is not available."
- (**Bradley West Solicitors Nominee Co Ltd v Keeman** [1994] 2 NZLR 111, 120-121)

[46] In support, counsel submitted that the plea was available to Mr Graham because the execution page of the employment agreement, which he signed, was then attached to a fundamentally different agreement in substance from the agreement he had previously reviewed and was formally accepting.

[47] I do not accept that the facts support that submission. I do not accept that when he signed the agreement Mr Graham was given the execution page only. Even if that was the case I would not accept on the facts as I have discussed them that the rest of the agreement was fundamentally different in substance from the agreement Mr Graham had discussed with Mr Pynt.

[48] As for whether there was a mistaken belief resulting from an erroneous explanation or description, Mr Graham was told that the drafts apparently identifying Crestline as the employer were generic only. There was no evidence that Mr Pynt ever told Mr Graham the drafts were intended to identify Crestline as Mr Graham's employer, or for that matter that Mr Pynt gave any indication that he regarded Crestline as the employer. Moreover Mr Graham was given an agreement identifying Search Australasia as his employer when Mr Pynt issued the completed, individualised agreements some two days before final signing. I have not accepted Mr Graham's evidence that Mr Pynt was asked to correct the reference to Search Australasia and indicated he would do so. Overall, even if Mr Graham held a mistaken belief as to the identity of his employer, there was no evidence he was given an erroneous explanation or description of the employment agreement.

[49] Accordingly I do not accept that the plea of non est factum is available here.

4. Search Australasia as Crestline's paying agent

[50] Counsel for Mr Graham also submitted that Search Australasia was merely Crestline's agent for the purpose of paying Mr Graham's salary. It was said this was a matter of convenience.

[51] With respect I regard that as an understatement of the nature of the various discussions between Messrs Pynt, Graham and Duff regarding an appropriate corporate structure for the acquisition of MRNZ's assets and business. The convenience factor was largely concerned with an assessment of tax-related requirements both in Australia and New Zealand. These were significant considerations affecting the corporate entities as well as Mr Graham's interests. They are fundamental considerations in any assessment of what, if any, corporate structure should be used for the operation of a business. While tax considerations might have tipped the balance in favour of establishing Search Australasia as a subsidiary rather than as a branch of Crestline, I do not accept that associated references to convenience support an argument that Search Australasia was in reality a mere paying agent of Crestline's.

[52] In addition there was no evidence of an express agreement that Search Australasia would pay Mr Graham's salary as agent for Crestline. Sue Green, an independent accountant and book keeper who had worked with Mr Graham for several years, said in evidence she and Mr Duff told Mr Pynt "it would be better and more effective if a New Zealand company was established to simplify the day to day financial and tax requirements. This meant that Crestline would still pay the salaries, but not directly." The sentence just quoted sets out the view of Ms Green and Messrs Duff and Graham, but there was no evidence that Mr Pynt agreed Crestline would still be the ultimate funder of anyone's salary once the decision to operate through a subsidiary had been made.

[53] Another problem with Ms Green's assertion is that it applies to all Search Australasia employees the notion of Crestline as paying agent. However the submission was that Crestline was the paying agent for Mr Graham only. There was nothing in the evidence to support separating Mr Graham out from the other employees in that way.

[54] Further to her evidence regarding Crestline as the funder of salaries, Ms Green pointed to a note dated 30 April 2002 from Mr Pynt, which included a statement that the payment of Search Australasia employees' salaries would be arranged by the Perth office by direct bank transfer.

However the note was attached to a memorandum of the same date from Mr Pynt, which in turn referred to the note as a “draft of the suggested processes to be followed to ensure job loads and financial information is provided promptly to head office.” The procedure set out in the note was only a proposal and was not the final procedure Search Australasia followed. As for the proposed arrangement regarding salaries, it was not an arrangement that Crestline fund the salaries, only that Crestline would attend to administrative aspects of payment and the facilitation of efficient reporting.

[55] Overall, the financial records produced indicated that Search Australasia incurred its own expenditure in the form of leases and other operating costs, as well as employment expenses. There was no record of any reimbursing of these expenses by Crestline, rather Crestline’s financial input took the form of the loans advanced to provide working capital, and for which it expected repayment. There is certainly no record of any reimbursement by Crestline of Mr Graham’s salary. Search Australasia also had its own income derived from its business activities, and there was no record of any remitting of that income to Crestline. To the extent there was enough of it to do so, Search Australasia’s income was used to pay its expenses.

[56] I therefore do not accept that Search Australasia was merely Crestline’s agent for the payment of Mr Graham’s salary.

5. Conclusion

[57] For all of the above reasons I am not persuaded that Crestline was Mr Graham’s employer.

Mr Graham’s substantive claims

[58] Having reached that conclusion, I cannot take Mr Graham’s remaining claims any further. However since some of them were discussed extensively during the investigation I will say this much.

- (a) Minimum term agreement. The employment agreement provided for termination by either party giving three months’ notice in writing to the other at any time after 30 April 2004. I regard it as a minimum term agreement, rather than a fixed term agreement. There was also provision in the agreement for termination at any time on the ground of serious misconduct, or on six months’ notice for performance-related reasons. The agreement does not mention redundancy or the failure of the business. Mr Graham’s employment ended without notice and before 30 April 2004. If such a claim were open to him, Mr Graham could succeed in respect of the unexpired minimum period of the employment agreement and the notice requirement (see, for example, comments in **McAulay v Sonoco New Zealand Limited** [1998] 2 ERNZ 225).
- (b) Redundancy. Much of the discussion about the redundancy concerned what could or should have been done about Search Australasia’s poor performance. It may be, as Mr Graham would have it, that Ms Brown’s departure and the lack of a replacement at her level adversely affected the company’s performance. Alternatively it may be that Search Australasia was not or never was capable of performing at much more than the level it did, and Crestline was misled into thinking otherwise. That matter is in issue before the Supreme Court of Western Australia. It would not in any event be open to the Authority to do any more than assess whether the decision to place Search Australasia in liquidation, and terminate Mr Graham’s employment, was made for genuine commercial reasons. I would say that it was.
- (c) Breach of good faith. That matter was not pursued beyond its mention in the statement of problem. I do not know what was being relied on in support, but since the parties have not pursued the matter, neither have I.

- (d) Outstanding annual leave entitlements. There is an outstanding entitlement to payment in respect of unused annual leave, but as Crestline was not the employer it is not liable for the payment.

Costs

[59] Costs are reserved. The parties may reach agreement on the matter, or if they seek a determination of the Authority they should file and serve memoranda setting out their positions.

R A Monaghan
Member, Employment Relations Authority