

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** Ria Greening (Applicant)  
**AND** About Demolition & Contracting (2003) Limited (Respondent)  
**REPRESENTATIVES** Robert Foitzik, for Applicant  
Graeme Ogilvie, for Respondent  
**MEMBER OF AUTHORITY** Vicki Campbell  
**INVESTIGATION MEETING** Consideration of Papers  
**DATE OF DETERMINATION** 7 June 2006

DETERMINATION OF THE AUTHORITY

[1] Ms Greening has applied to the Employment Relations Authority to re-open an investigation. The employment relationship problem has been the subject of a determination of the Authority in *About Demolition & Contracting (2003) Limited v Ria Greening* 17 January 2006, WA 4/06. The Authority issued a costs determination in *About Demolition & Contracting (2003) Limited v Ria Greening*, 29 March 2006, WA 4A/06. The application for re-opening is opposed by About Demolition & Contracting Ltd (“About Demolition”).

[2] The issue for this determination is whether or not grounds exist for a reopening of the investigation. I have determined this matter on the papers I have in front of me. I want to make it quite clear that I am not determining whether what Ms Greening says in her application is correct or incorrect.

[3] The power to order the reopening of an investigation is contained in the second schedule to the Employment Relations Act 2000 at clause 4(1):

The Authority may order an investigation to be reopened upon such terms as it thinks reasonable.

[4] As with any discretionary power the Authority must not use its discretion arbitrarily. It is well established that the main criterion in determining whether a rehearing should be granted is

whether there has been a miscarriage of justice (*Waterfront Workers Union v Ports of Auckland* [1994] 1 ERNZ 604).

[5] The Authority must balance the importance of certainty in investigating and determining an employment relationship problem with the rights of the successful party to enjoy the fruits of a determination in its favour.

### **Background**

[6] In February 2005, About Demolition raised concerns with Ms Greening relating to her conduct in the handling of the company's finances. Following an investigation, during which Ms Greening was properly represented, she was dismissed for serious misconduct.

[7] In March 2005, Ms Greening raised an issue about the payment of her wages on termination. The dispute resulted in an urgent application being filed in the Employment Relations Authority. The recovery of wages matter was resolved and the application withdrawn.

[8] On 11 May 2005, Ms Greening raised a personal grievance with About Demolition claiming unjustified dismissal. The next day, on 12 May 2005 About Demolition filed an application in the Authority claiming Ms Greening had breached her employment agreement with it.

[9] On 13 May 2005 About Demolition responded to Ms Greening's personal grievance denying her claim of unjustified dismissal. Ms Greening filed her personal grievance for unjustified dismissal in the Authority on 14 July 2005, while at the same time she filed her statement in reply to the company's claims for breach of contract.

[10] The Authority held an investigation into both claims on 30 November 2005. The Member found that Ms Greening did not have a personal grievance for unjustified dismissal. The Authority also dismissed the claim by About Demolition relating to the breach of contract. As already stated the determination of the substantive matters was issued on 17 January 2005.

[11] In its substantive determination the Authority reserved the issue of costs. On 27 March 2006 submissions relating to costs were filed in the Authority with a determination being issued on 29 March 2006. The Authority concluded that the key focus of the investigation was on the personal grievance, and that About Demolition incurred increased costs due to it undertaking extra work to strengthen its evidence backing its claims, which, the Member found, demonstrated that Ms

Greening's explanations to allegations against her were inadequate and misleading. The Authority ordered Ms Greening to contribute \$2,500 towards the costs incurred by About Demolition.

[12] On 14 December 2005, and before the substantive determination had been issued, Mr Foitzik lodged a formal written complaint with the Chief of the Employment Relations Authority, on behalf of Ms Greening, about the conduct of the investigation meeting. In his letter to Mr Wilson, Mr Foitzik explained that the complaint had been lodged before the matter was determined to ensure it was not regarded as a response to an unfavourable decision but that if the decision is unfavourable, then it would be challenged. This is, of course, the appropriate remedy for parties dissatisfied with the Authority's investigation or its outcome. However, as events transpired, the substantive decision was not challenged.

[13] However, the determination issued on costs, is the subject of a challenge by Ms Greening.

### **Application for re-opening**

[14] In support of her application for reopening, Ms Greening says the determination of the Authority was wrong on the facts and on the law and as such constitutes a miscarriage of justice. Ms Greening says specifically, that the Authority decided points of law erroneously, admitted improper evidence, acted in a biased manner and prejudiced the applicant, and made its determination against the weight of the evidence.

[15] Ms Greening also claims the respondent received a favourable costs determination as a result of the Authority being prejudiced and taking a biased approach.

[16] It is a serious matter to make allegations of bias against Authority Members. The allegations go to the heart of the ethical and professional conduct of an Authority Member's office.

[17] In her application for re-opening Ms Greening also states that until she had received the costs determination of the Authority she was happy and relieved that the substantive matters had been finalised. This comment contradicts what she says earlier in her application for reopening, that is, that she was happy with the matter being finalised and is consistent with the fact that Ms Greening did not challenge the substantive determinations but is challenging the costs determination.

[18] Parties are entitled to have some certainty in the determination of their substantive issues and to enjoy the fruits of their victory. The claims and counterclaims by both parties failed. Ms Greening was represented by legal counsel throughout. The Employment Relations Act provides Ms Greening with the opportunity to have her case heard from the beginning if she was dissatisfied with it.

[19] In her application for re-opening Ms Greening states that she was happy with the determination and getting the matters finalised. It seems to me it is the costs decision which Ms Greening is most unhappy about and, appropriately, she has challenged that determination.

[20] After considering the submissions of the parties, the Authority's determination, and having reviewed the information available to the Authority in reaching that determination, I have come to the conclusion that there is nothing in the substantive determination that in my view, requires to be put right. That, together with the fact that the determination on costs is the subject of a challenge, the application to reopen is declined.

Vicki Campbell  
Member of Employment Relations Authority