Attention is drawn to the order prohibiting publication of certain information in this determination

IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON

[2011] NZERA Wellington 79
5314814

	BETWEEN	KIM HONEYFIELD Applicant
	AND	REID HOLDINGS LIMITED Respondent

Member of Authority:	G J Wood
Representatives:	Ian Matheson for the Applicant Kylie Pascoe for the Respondent
Investigation Meeting:	18 January 2011 at New Plymouth
Submissions Received By:	21 February 2011
Determination:	13 May 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Ms Honeyfield, claims that she was unjustifiably disadvantaged and dismissed from her position as a restaurant supervisor in the respondent's (Reid) restaurant. She also claims, based on the same facts, penalties for breaches of good faith based both on statute and common law. Ms Honeyfield also claims that there is a duty under the parties' settlement agreement, or an implied term of the parties' agreement that survived her dismissal, to give accurate reasons for the dismissal and this did not occur.

[2] Reid considers that Ms Honeyfield's claims are precluded from being brought because she entered into a settlement agreement under s.149 of the Employment Relations Act 2000 in full and final settlement of all matters relating to the

employment relationship and the termination thereof. The settlement agreement is set out in the appendix.

[3] Ms Honeyfield claims that she is not precluded from bringing the claims because the facts giving rise to the grievances were not known to her at the time she signed the settlement agreement. In particular, she relies on two matters. The first was her lack of knowledge (and/or being the subject of misrepresentation) over the way another worker involved in the dispute which led to her dismissal was treated. Here she claims she was dismissed because of her dismissal of another Reid employee, who was allegedly bringing a claim against Reid, yet she was not told that the employee would have been leaving soon anyway, and/or that any potential claim had been settled. The second relates to comments allegedly made by Ms Barbara Olsen-Henderson, the principal of Reid, to staff about her subsequent to her dismissal, which she obviously could not have known about at the time of entering into the settlement agreement.

[4] I continue, on an interim basis, my order prohibiting the publication of any claims or evidence in any way related to the reasons allegedly given to staff by Ms Olsen-Henderson after Ms Honeyfield's dismissal.

The law

[5] Section 149 of the Act provides for the settlement of employment relationship problems. The parties to such settlements have explained to them by a statutory mediator that the terms are final and binding on and enforceable by the parties, may not be cancelled under s.7 of the Contractual Remedies Act 1979, and may not be brought before the Authority except for enforcement purposes. Section 7 of that Act provides that contracts may be cancelled if a party is induced to enter into it by misrepresentation, or the contract has or will be broken, provided such breach is substantial.

[6] In *Marlow v. Yorkshire New Zealand Ltd* [2000] 1 ERNZ 206, it was held at 213:

> *It is in the public interest that contracts made between employers and employees should be upheld. It is also in the public interest to avoid unnecessary litigation by upholding compromises of doubtful rights … It seems to me that it is essentially a question of fact and of construction of the written agreement as explained by the surrounding circumstances.*

[7] It was further held at 214:

> *It seems that there are two separate considerations. The first is, what does the agreement that the parties undoubtedly made, on a proper construction of it, mean? The second is whether, notwithstanding the agreement, there exist technical reasons for saying that the claim is not barred by the particular agreement. A compromise or settlement is a contract and, like any other, is capable of being subject to disagreement as to its meaning and effect. As Foskett points out at para.5-02, if the agreement has been reduced to writing, the intention of the parties must be construed in the usual way by reference to the document itself, without regard to the subjective understanding of the parties or other extrinsic evidence of what may or may not have been in the minds of the parties. However, special rules of construction have been worked out in relation to compromises as Foskett explains in para.5-06:*
>
> > *Other principles of construction are brought into play in the context of compromise from time to time. One such principle finds its origin in the way in which deeds of release were construed. In broad terms, the principle applied in relation to the construction of a general release was that it was to be limited by the particular purpose for which it was executed*
> > …
>
> *…Foskett at para.6-01:*
>
> > *An unimpeached compromise represents the end of the dispute or disputes from which it arose. Such issues of fact or law as may have formed the subject matter of the original disputation are buried beneath the surface of the compromise. The court will not permit them to be raised afresh in the context of a new action.*
>
> …
>
> *There is also a principle that, unless an actual or potential dispute can be discerned as existing before an agreement between the parties is made, that agreement will not be taken to have compromised the issue … Understandably enough, settlements expressed in general language were held to cover all potential claims capable of arising out of the disputed event, even if damage or loss arising from them was unknown.*
>
> *Applying these rules to the language used by the parties as explained by the context, the agreement must be taken to be an agreement for the settlement of all claims under the contract of whatever nature and whether already commenced or only potential or inchoate but it must also be limited to claims of the existence of which both parties were aware and to claims of the nature they were discussing. These arose out of the redundancy of the plaintiff's position. The settlement cannot reasonably be taken to extend to preclude the plaintiff from making claims coming to light later out of unrelated events during the employment.*

Determination

[8] Ms Honeyfield effectively seeks to bring claims for unjustifiable disadvantage and dismissal relying on breaches of statutory and common law duties of good faith. This followed Ms Honeyfield's summary dismissal due to her own alleged unjustified dismissal of a staff member who reported to her, which Ms Honeyfield has claimed had been conducted on Ms Olsen-Henderson's instructions. The fact is therefore, that all of Ms Honeyfield's claims about events leading up to and including her dismissal are based on the same grounds, whether couched as personal grievances, or breaches of good faith and/or contract, and should therefore be assessed together.

[9] The settlement agreement separately held:

> *This agreement, and the payment set out above, are in full and final settlement of any and all claims you may have against Batch on Breakwater, relating to your employment and its termination.*

[10] Ms Honeyfield also acknowledged that she accepted the moneys *in full and final settlement of all matters relating to the employment relationship and the termination thereof* and that she understood that she was entitled to seek independent advice about the agreement.

[11] It is clear from the above that Ms Honeyfield's employment was terminated because of her treatment of the junior worker, even though Ms Honeyfield was not aware that that other worker was not necessarily contemplating legal action against Reid and would have been leaving soon anyway.

[12] I accept that the dealings over the other employee were claims of the nature that she and Reid were discussing (*Marlow* applied). These were not unrelated events, but rather they were part of the factual matrix leading up to the dismissal, whether or not disclosed to either of the parties. The disputed event was the dismissal of Ms Honeyfield and the position of the other employee about taking separate action against Reid constituted unknown damages in terms of the *Marlow* analysis.

[13] Furthermore, employees are able to take advice before entering into mediated settlements. They must therefore be taken to be aware that they can rely on procedures such as disclosure of documents and questioning of witnesses to bring out previously unknown facts, that they can then rely on to bolster their claims for unjustified disadvantage and/or dismissal. Thus such parties must be taken to have

agreed to terms of settlement in the knowledge of these possibilities, and therefore deliberately foregone them, particularly in the light of the strong wording used in the settlement agreement, and the linkage to potential claims such as those here of unjustified disadvantage/dismissal and breach of good faith/contract.

[14] The issue relating to subsequent statements to staff is more difficult. It was not ever raised with Ms Honeyfield even in a general sense. However, the claim is not made that the statements made subsequently to staff constituted the real reasons for her dismissal, and in any event such a claim would be counter to the potential evidence received to date. It therefore follows that the statements, having been made post-employment, can not form grounds for a personal grievance for unjustified dismissal or action. All the above claims are therefore dismissed.

[15] Mr Matheson's alternative argument, however, that a claim may be made for damages for breach of the settlement agreement and/or breach of a duty surviving employment can be pursued, as they obviously post date the settlement agreement and will require evidence on oath to determine.

Costs

[16] Costs are reserved. In the light of this determination, I strongly suggest to the parties that they consider resolving the outstanding matter on their own terms, including, if necessary, by way of further mediation.

G J Wood
Member of the Employment Relations Authority