

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Andrew James House (Applicant)
AND Independent Power NZ Limited (Respondent)
REPRESENTATIVES Andrew House in person
Bruce Page and Janet Page for respondent
MEMBER OF AUTHORITY Alastair Dumbleton
INVESTIGATION MEETING 9 August 2004
DATE OF DETERMINATION 10 August 2004

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] On 25 June 2004 the Authority received an application signed and lodged by Mr. Andrew House in which he stated the problem he wanted the Authority to resolve. With reference to a Record of Settlement document annexed to the application, Mr. House said his problem was that the settlement had not been honoured by the employer. Until recently Mr. House's employer was Independent Power NZ Limited, which company is named as a party to the Record of Settlement.

[2] In his application Mr. House advised the Authority of his wish to have the problem resolved in the following way;

Issues around mediation to be resolved:

Payment of \$4,000 under s.123(c)(i) plus any penalties or further costs endured.

Also require one (1) day pay owing plus 3 days holiday pay owing (total approx \$400).

[3] At an investigation meeting Mr. Bruce Page and Mrs. Janet Page, both of whom are directors of Independent Power NZ Limited, have confirmed that Mr. House has not been paid the \$4,000. They said he had resigned his employment with the company in June 2004 and had been paid two weeks wages including holiday pay (\$1,390.27). Mr. House has acknowledged that he did resign and receive this final payment. He advised the Authority that consequently he was no longer claiming wages and holiday pay of about \$400. The dispute between Mr. House and his former employer is therefore about the amount of \$4,000 said to be due.

[4] The Record of Settlement, on its face at least, shows that on 11 June 2004, Mr. Page on behalf of Independent Power NZ Limited and Mr. House, had agreed upon terms of settlement in respect

of an employment relationship problem. The signatures of Mr. House and Mr. Page appear twice on the document and the signature of Ms. Annabel Newman, a mediator, is also on it.

[5] The Settlement document records that the terms set out above the signatures, including that of Mr. Page, are in “full and final settlement of all matters” between Mr House and Independent Power NZ Limited. The following term in particular is recorded;

3. *The Respondent will pay to the Applicant, on a without admission of liability basis, within 7 days of the date hereof, the compensatory sum of \$4,000 in terms of s.123(c)(i) of the Employment Relations Act 2000.*

The Settlement does not mention an additional term that I find was also agreed between the parties, that Mr. House would resign his employment. There is however no dispute about this being a further term. Mr House did in fact resign straight after the mediation.

[6] Mr. Page acknowledged to the Authority that at a mediation held on 11 June 2004, on behalf of his company he had undertaken to pay Mr. House \$4000 in settlement of their employment dispute. His explanation for not carrying out his undertaking is that it was “coerced” from him by “duress” and “blackmail” applied during the mediation. These accusations aimed at Mr House and the mediator, are extremely serious. Mr Page said that a short time after he had signed the settlement record, he and his wife regretted what he had undertaken because they regarded the settlement as wrong and unjust and as having been obtained by taking advantage of their lack of knowledge as to their rights in mediation.

[7] For a while after the Record of Settlement had been signed it seems that Mr. Page became attracted to the idea that the settlement was null and void or otherwise ineffective, because when it was recorded the terms “applicant” and “respondent” became transposed in the document by typographical error or similar slip. It could therefore be read as meaning that the payment of \$4,000 was to be made by Mr. House to Independent Power NZ Limited, and not the other way around as had been expressly agreed at the mediation. This, as it seems Mr. Page has subsequently realised, is a completely unmeritorious proposition, for it is clear from the reference to the payment being “in terms of s.123(c)(i)” that the recipient of the money was intended to be the party having the status of an employee. A payment under that provision of the Employment Relations Act, as it states, can only be made to an employee. That was Mr. House, who else? For completeness I find therefore that the intention of the parties to this effect is clear from the words used in the settlement document. Unless Mr. Page has some other defence available to him the terms of settlement are enforceable against Independent Power NZ Limited under the provisions of the Employment Relations Act.

[8] There are statutory limitations on the ability of participants in mediation conducted under the Act, to tell the Authority what happened during the process. The quality of any settlement reached is also not something the Authority may concern itself with, as that was a matter for the parties alone. I have considered everything complained of by Mr. and Mrs. Page about the nature of the coercion or duress they allegedly experienced in the course of giving a signed and recorded undertaking to pay Mr. House \$4,000. I have also considered what has been said by Mr. House and by Ms. Newman, the mediator, as far as she was permitted by the Act to tell me, about the general introductory explanation she gave as to the purpose of the mediation and the procedure that would be followed. I note that this explanation included advice to Mr House and to Mr and Mrs Page, that parties in mediation must conduct themselves in “good faith”. There is no disagreement that the mediator took time to outline the parameters of mediation in opening and conducting the settlement discussions that took place.

[9] Extreme circumstances are required before a release can be given from an agreement reached under “duress” as that term is understood in law. I find the accusations made against Mr House and the mediator to be completely unfounded. There is not the slightest sign of duress or bad faith behaviour as alleged. It is Mr Page as the signatory to the settlement that his company has not been prepared to honour, who I must conclude has not acted in good faith.

[10] I find that Mr. and Mrs. Page felt they had become caught in the middle of a stressful employment relationship problem they believed was caused by Mr House. They took some advice as to how they might resolve it and this led them into mediation with Mr House. The circumstances offered no easy resolution; they either reached agreement with Mr. House that he would resign, or they embarked on a disciplinary process, even to the point of dismissal, risking a personal grievance claim and payments being awarded against the company if it was later found that he had been unjustifiably dismissed. The mediator stepped them through the possibilities and after some bargaining the sum of \$4,000 was struck between the parties to resolve the problem. Mr Page cannot have been surprised that the option of resignation offered by his employee had some price attached to it.

[11] I am quite unable to find that Mr. Page was in any way forced against his will to say "yes" to the settlement. He had the benefit of a full and accurate explanation given by the mediator about the mediation process. I find that in the way Ms Newman followed the requirements of s.149 of the Act, in having the parties confirm that they wished to settle on particular terms, and in explaining to them the enforceability of the settlement, Mr. Page could not reasonably have doubted that it was open to him to say "no" if he had not wished to agree to those terms. Although he later had cause to regret the bargain he had reached and wished to resile from it, legal and commercial life does not allow him that luxury. Being a businessman, he will know that very well.

Determination and Compliance Order

[12] As the Record of Settlement states and the signature given by Mr. Page confirms, his undertaking that his company pay Mr House \$4,000 is final, binding and enforceable. As the Pages made clear during the investigation meeting their strong opposition to making this payment, there is no satisfactory alternative but for the Authority of its own motion to make an order requiring the settlement to be performed. Agreed terms of settlement between parties, as were recorded and signed in this case, are enforceable under s.151 of the Act by compliance order made under s.137.

It is therefore ordered by the Authority that Independent Power NZ Limited shall pay Andrew House the sum of \$4,000 and shall do so in terms of s.123(c)(i) of the Employment Relations Act.

Pursuant to s.137 of the Act, I specify the time within which this order is to be obeyed shall be no later than 5 pm. on Friday 13 August 2004.

The address of Mr House is given on the front page of his application to the Authority, a copy of which Mr and Mrs Page have received, and they have corresponded with him at that address before.

Enforcement of compliance order

[13] The Act provides a right of further action that may be taken by any person affected by a failure to comply with a compliance order such as the Authority has now made. Application may be made to the Employment Court by the person affected, under s.138 of the Act. If the Court is satisfied there has been a failure to comply with the Authority’s order it may, under s.140 (6) of the Act, order that the person in default suffer one or more of the following;

- be sentenced to imprisonment for a term not exceeding 3 months:
- be fined a sum not exceeding \$40,000:
- have the property of that person sequestered.

Interest

[14] Independent Power NZ Limited shall also pay interest on the outstanding amount. Although he kept his side of the bargain and resigned his job with the company, Mr House has been kept out of his money since 18 June 2004. He has not been able to find a job since and has had no income. The Employment Relations Service had to pay the \$70 fee to bring this application. Accordingly under clause 11 of Schedule 2 of the Act, interest will be awarded from 18 June 2004 until the \$4,000 has been paid in full to Mr House. The rate of interest will be 8.25% which is the current 90-day bill rate of 6.25% plus 2%, as provided under clause 11(1).

Expenses

[15] Under clause 15 of Schedule 2 a further order is made, requiring Independent Power NZ Ltd to reimburse to Mr House the \$70 expense incurred in bringing this application. Once he receives it Mr House is to remit the payment to the Employment Relations Service.

A Dumbleton

Member of Employment Relations Authority