

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 104
5358789

BETWEEN KAISARINA KATOPAU
 Applicant

A N D TURUKI HEALTH CARE
 Respondent

Member of Authority: K J Anderson

Representatives: Kaisarina Katopau, In Person
 Mere King, Counsel for Respondent

Investigation: On the papers

Date of Determination: 23 March 2012

DETERMINATION OF THE AUTHORITY

Background

[1] In the *Statement of Problem* received by the Authority on 18 January 2012, Ms Katopau asks the Authority to conduct “a formal investigation” and order that she be granted the remedy of reinstatement to her previous position. While acknowledging that she received a compensation payment as the result of an agreement reached on 4 October 2011, Ms Katopau says that “it was not enough” in the circumstances.

[2] The *Statement in Reply* received from the respondent on 2 February 2012, says that Ms Katopau resigned from her employment on 4 October 2011. The resignation was an agreed outcome of mediation that took place on that day and one of the terms of the *Record of Settlement* signed by the parties and certified by a Mediator from the Department of Labour. The respondent says that Ms Katopau is precluded from bringing her claims to the Authority due to the record of settlement being full and

final settlement of all matters arising out of the employment relationship. The respondent also says that Ms Katopau's claims are frivolous and vexatious.

The record of settlement

[3] The parties attended mediation on 4 October 2011 and signed a *Record of Settlement*; the terms of which are confidential and which also contained the usual standard term at clause 9:

This is the full and final settlement of all matters between the Applicant and the Respondent arising out of their employment relationship.

Then further in the record of settlement, under the first set of signatures of the parties:

We confirm that we fully understand that once the Mediator signs the agreed terms of settlement that:

1. The settlement is final and binding on and enforceable by us; and
2. except for enforcement purposes, neither of us may seek to bring those terms before the Authority or the Court whether by action, appeal, and application for review, or otherwise; and
3. the terms of the settlement cannot be cancelled under section 7 of the Contractual Remedies Act 1979; and
4. that section 149(4) provides that a person who breaches an agreed term of settlement to which subsection (3) applies is liable to a penalty imposed by the Authority.

Both parties then signed the record of settlement again and it was certified by the Mediator.

[4] The key point that now must be recognised is that the parties signed an agreement that they had reached a full and final settlement of all matters arising out of their employment relationship (emphasis added). Ms Katopau was represented by an experienced lawyer and one can reasonably assume that she was properly advised in regard to the legal effect of signing the *Record of Settlement*. And the Mediator has certified that the parties understood the legal consequences of the terms of settlement once the Mediator signed the document.

Determination

[5] It is not unusual for a party to subsequently have second thoughts about the signed agreement that they have entered to, as Ms Katopau appears to now have had;

and I accept that her feelings about the matters she has raised are most probably genuine. However, I am obliged to find that Ms Katopau is legally bound by the terms of the record of settlement and the matter cannot be re-litigated (or reopened), or in the words of the *Record of Settlement*, Ms Katopau cannot bring the terms of settlement before the Authority (or the Employment Court), except for enforcement purposes and this is not an enforcement claim that is being pursued.¹ It follows that the Authority cannot grant the remedies sought by Ms Katopau and her claims are dismissed accordingly.

Costs

[6] Costs are reserved. The parties are invited to resolve the matter of costs if they can. In the event a resolution cannot be reached, the respondent has 28 days from the date of this determination to file and serve submissions with the Authority. The applicant has a further 14 days to file and serve submissions.

K J Anderson
Member of the Employment Relations Authority

¹ Albeit it could be said that it is an enforcement issue for the respondent.