

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2011] NZERA Wellington 89  
5328268

BETWEEN                      TE HOEROA MARUMARU  
Applicant

AND                              WAIPAKURANUI  
INCORPORATION  
Respondent

Member of Authority:      G J Wood

Representatives:            Ken Mair for the Applicant  
Digby Livingston for the Respondent

Investigation Meeting:     5 May 2011

Submissions Received:     5 May 2011

Determination:              26 May 2011

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicant, Mr Marumaru, claims that the respondent (Waipakuranui) has breached the terms of settlement of the parties' employment relationship problem, and the consent order of the Authority incorporating those terms of settlement. He seeks a compliance order requiring Waipakuranui to comply with the terms of settlement and any other such remedies the Authority sees fit, plus costs. Waipakuranui denies that it has breached the terms of settlement.

**Factual discussion**

[2] At an Authority investigation meeting in 2010 the parties agreed terms of settlement. The relevant parts of those terms of settlement are as follows:

1. *These terms of settlement and all matters discussed between the parties shall remain, so far as the law allows, confidential to the parties;*
2. *Waipakuranui Incorporation will pay Te Hoeroa Marumaru within 7 days of the date hereof the compensatory sum of \$X in terms of the provisions of s.123(1)(c)(i) of the Employment Relations Act 2000;*
3. *This is the full and final settlement of all matters between the applicant and the respondent arising out of their employment relationship;*
4. *The parties request the Authority to order these terms of settlement as orders of the Authority, including the term as to confidentiality.*

[3] The Authority then proceeded to issue a consent determination in those terms.

[4] Mr Marumaru relies on two actions of the Board and/or its representatives as being in breach of the agreement. The first was the Chairperson's report for the financial year ending 30 June 2009 to the Annual General Meeting in May 2010. There the Chairperson stated:

*At a hearing before the Employment Relations Authority (ERA) we saw the potential for a protracted process possibly lasting years with no predictable outcome. We therefore decided to negotiate a (confidential) full and final settlement of the employment matter in order to 'fix' the cost.*

*While the terms of the settlement are confidential (we did tell the Employment Relations Authority member that the figure will be obvious in the 2010 financial report) I can report that between the redundancy, ERA settlement, legal fees and other costs, the termination of the previous manager's employment has cost well over \$100,000.*

[5] I do not accept that the Chairperson breached the terms of settlement with this communication, even though the terms of settlement properly related to the 2010 financial year. That is because it was appropriate for the Chairperson to inform members of Waipakuranui of a major cost (if not the major cost to the Incorporation that was in train). The Chairperson did not divulge the settlement sum, which was

obviously less than \$100,000, given Mr Marumaru's significant redundancy compensation after many years' service, plus other costs. Furthermore, Waipakuranui will in any event be required by law to publish the actual figure in its annual accounts.

[6] The second alleged breach relates to evidence given before the Maori Land Court and involves an application by Mr Marumaru over what should happen to land owned by Waipakuranui. The Incorporation have sought to have the application struck out and in evidence the Chairperson stated (verbatim):

*...I suggest that the Court find this application vexatious as there is not one shred of evidence that shareholders generally would benefit from an investigation. On the contrary the costs involved in this action, along with the cost of the Employment related matter and its settlement (we had to weigh up the cost of continuing to fight versus the (reluctantly) agreed settlement), is further money out of shareholders' pockets when neither current shareholders nor in some cases their forebears have not had a dividend since 1985.*

[7] In the context of a claim to the Maori Land Court that Mr Marumaru's application was vexatious I find that the reference to the settlement of the Employment Relations Authority matter does constitute a breach of the term of confidentiality. That is because it is not only the terms of settlement, but also all matters discussed between the parties, that shall remain confidential to them. Instead the Chairperson sought to include his views about the *reluctantly agreed settlement* to support Waipakuranui's claim that Mr Marumaru was being vexatious in bringing his other claim. This implies that his employment claim was also vexatious and therefore is a clear breach of the confidentiality required of Waipakuranui.

### **Remedies**

[8] Waipakuranui has undertaken that it would not breach any of the terms of settlement. I accept Waipakuranui's undertaking and therefore decline to make a compliance order, particularly as such an undertaking was given before the investigation meeting.

[9] No further remedies are appropriate.

### **Costs**

[10] Both parties have incurred significant costs pursuing a matter of importance to both of them, and both have to some degree been successful.

[11] First, Mr Marumaru's original application was deficient in that it claimed remedies that could not have been awarded to him. Second, had Mr Marumaru been prepared to accept Waipakuranui's undertaking then the matter may have been resolved without the need for an investigation meeting. On the other hand there has been no formal acceptance by Waipakuranui that they have breached the terms of settlement in the past. In all the circumstances I consider that an order of \$250 in Mr Marumaru's favour is appropriate.

[12] I therefore order the respondent, Waipakuranui Incorporation Ltd, to pay the applicant, Te Hoeroa Marumaru, the sum of \$250.00 in costs.

**G J Wood**  
**Member of the Employment Relations Authority**