

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 379/07  
5091234

BETWEEN

PAULA MATTHEWS  
Applicant

AND

ANZ NATIONAL BANK  
LIMITED  
Respondent

Member of Authority: Marija Urlich

Representatives: Carl Anderson, for Applicant  
Andre Lubbe, for Respondent

Investigation Meeting: 31 October 2007

Determination: 3 December 2007

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**DETERMINATION OF THE AUTHORITY**

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## **Employment Relationship Problem**

[1] Mrs Matthews was a long-serving employee of the National Bank until her redundancy in June 2007. During Mrs Matthews notice period the calculation of her redundancy compensation was a live dispute between the parties. She says the issue is still live. The National Bank says the matter has been resolved. Whether that is the case is the first question the Authority must consider and resolve. If that question is resolved in Mrs Matthews' favour the Authority can then consider and determine the calculation dispute.

### **Principles and issues – accord and satisfaction (the first issue)**

[2] There are three issues to be considered:

- (i) Whether Mrs Matthews is precluded from bringing a personal grievance by reason of accord and satisfaction;

- (ii) Was the settlement induced by duress?
- (iii) Was the settlement induced by undue influence?<sup>1</sup>

[3] In this consideration I am guided by the following statements of principle as quoted in the *Cabletalk* judgment:

- (i) Accord and satisfaction

*...the purchase of a release from an obligation, whether arising under contract or tort, by means of valuable consideration, not being the actual performance of the obligation itself.*<sup>2</sup>

- (ii) Duress

*The law recognises that in all but the most extreme cases of duress there has been consent. The focus is now on the quality of that consent. If it has been given in circumstances which the law regards as justifying relief, the party who acted under duress may avoid the contract, unless it has been affirmed once the circumstances amounting to duress have ceased to operate.*<sup>3</sup>

- (iii) Undue influence

*The basic principles are well settled. As expressed in 18 Halbury's laws of England (4<sup>th</sup> ed) at para 332, undue influence consists in the gaining of an unfair advantage by an unconscientious use of power by a stronger party against a weaker in the form of some unfair and improper conduct, some coercion from outside, some overreaching, some form of cheating and generally, though not always, some personal advantage obtained by the stronger party. It is directed at conduct within a relationship which justifies the conclusion that the disposition or agreement was not the result of a free exercise of the disposer's will. The doctrine is founded on the principle that equity will protect the party who is subject to the influence of another from victimisation.*<sup>4</sup>

*The law relieves only an extreme loss of autonomy.*<sup>5</sup>

## What happened?

<sup>1</sup> *Cabletalk Astute Network Services v Cunningham* [2004] 1 ERNZ 506

<sup>2</sup> *British Russian Gazette & Trade Outlook Ltd v Associated Newspapers Ltd* [1933] 2 KB 616; [1933] All ER Rep 320, at pp 643-644; p 327

<sup>3</sup> *A-G for England & Wales v R* [2002] 2 NZLR 91 (CA), at p 111

<sup>4</sup> *Contractors Bonding Limited v Snee* [1992] 2 NZLR 157; (1991) 3 NZBLC 102,418 (CA), at p 165; p 102425

<sup>5</sup> *ASB Bank Ltd v Harlick* [1996] 1 NZLR 655; (1996) 5 NZBLC 103,988 (CA), at p 659; p 103,992

[4] For fourteen years Mrs Matthews worked as a teller in the Kaitaia branch of the National Bank. She worked three and a half hours per day. The Bank wanted her to work 5 hours per day. In November 2006 Mrs Matthews was advised by her manager that her hours were no longer viable and was offered the alternative hours or redundancy. Mrs Matthews was also offered a trial of the alternative hours which she took up.

[5] In late March 2007, at the end of the trial period, Mrs Matthews advised her manager that the alternative hours did not suit her and that she wished to elect the redundancy option. In April 2007 a proposed calculation of Mrs Matthews' redundancy compensation was put to her. Mrs Matthews, through her union, challenged the calculation saying that the terms of the relevant collective employment agreement provided a calculation based on the most recent hours of work.

[6] There is no dispute between the parties that Mrs Matthews had raised this issue and that the parties had taken steps before Mrs Matthews employment ended to resolve the dispute including attending mediation.

[7] On Thursday, 21 June 2007 Mrs Matthews received written notice ("the letter") that her employment would end on Friday, 22 June 2007. This letter was faxed to her by Mr Anderson, her union organiser. Mrs Matthews had been verbally advised two weeks earlier that this would be her last day of employment but she said she was upset to receive short written notice of the date her employment was to end and this upset was compounded because her manager was away on holiday at the time. Mrs Matthews has not raised a personal grievance in relation to these process issues and does not challenge the genuineness of her redundancy.

[8] On Thursday 21 June 2007 Mr Anderson had had an email exchange with the author of the letter, Mr Neels De Coning, a People Capital Consultant with the Bank, about the letter and in particular the final section of the letter and the phrase *as full and final settlement*:

*Accepted as full and final settlement and to remain confidential between the parties*

1) Signed \_\_\_\_\_ (*Paula Matthews*)

Date \_\_\_\_\_

2) Signed \_\_\_\_\_ (*Manager Kaitaia Branch*)

Date \_\_\_\_\_

[9] Mr De Coning suggested Mrs Matthews cross out *as full and final settlement*. He said the redundancy calculation represented the Bank's final settlement offer to Mrs Matthews and represented a compromise between the parties' respective view of the disputed.

[10] Mr Anderson faxed the letter to Mrs Matthews. He did not forward her the exchange with Mr De Coning or discuss it with her.

[11] On Friday, 22 June 2007 Lee Iwashita, the manager of the Whangarei branch of the Bank attended the Kaitai Branch. Her role was to complete the paper-work with Mrs Matthews on her final day. During her drive to Kaitaia Ms Iwashita was fully briefed by Mr De Coning including the need to draw to Mrs Matthews' attention the *as full and final settlement* issue with the letter.

[12] Mrs Matthews said she was very upset on her last day and that Mrs Iwashita was lovely. They meet in the manager's office. The meeting spanned at least two hours; the time necessary to go through the redundancy letter, final pay slip, superannuation calculation and other aspects of the Bank's procedure for employee's leaving the organisation.

[13] Mrs Iwashita dealt with the redundancy letter first. At the investigation meeting Mrs Matthews accepted that Mrs Iwashita went through the redundancy calculation, discussed the *full and final* phrase with her, that she did not need to sign the letter because signing was acceptance and that if she did sign it she could not pursue her claim against the Bank.

[14] Mrs Iwashita said Mrs Matthews said before she signed the letter that she did not want her claim to go any further and she wanted the relationship with the Bank to end on good terms. Mrs Iwashita said she knew Mrs Matthews was fully involved in

the conversation with her because she asked about dates when the funds would be transferred to her.

[15] Mrs Matthews said she signed the letter because she wanted the exit process over and done with and she did not understand that by signing the letter she was jeopardising her dispute.

### **Discussion**

[16] The wording of the letter is clear; acceptance of the redundancy compensation was in full and final settlement of the claims between the parties. At time of signing there was one claim between the parties; the dispute over the calculation of Mrs Matthews' redundancy compensation. The dispute was discussed at the meeting on 22 June 2007 as were the implications of signing the letter. This is the factual background against which the letter must be construed.

[17] The words *Accepted as full and final settlement* do not expressly refer to the calculation dispute but read in the context of the meeting and the live dispute between the parties I am satisfied they apply to that dispute.

[18] The evidence is compelling that Mrs Matthews wanted finality on 22 June 2007, understood that would be achieved by signing the agreement and understood she was being offered a compromise by the Bank.

[19] There is no basis for a claim of duress or undue influence. The nature of the relationship between the parties was one of trust and confidence. Mrs Matthews was entitled to be treated by the Bank in an open and honest manner. On the evidence, this is what occurred. The Bank discussed its settlement offer with her representative and directly with her.

[20] Mrs Matthews said she was too upset to understand anything Ms Iwashita said to her during the Friday meeting. I do not accept this. Mrs Matthews confirmed in evidence that Mrs Iwashita explained the letter and the implications of signing it. There was no suggestion that the meeting was hurried or that Mrs Iwashita was

overbearing; Mrs Matthews described her as lovely. Mrs Matthews had been represented throughout the dispute and her union had raised the key issue around the letter the day before.

### **Determination**

[21] Mrs Matthews reached a settlement of her dispute with the Bank on 22 June 2007. The dispute was well known to the parties and attempts to resolve it had been made prior to this date. The settlement reached was to Mrs Matthews' advantage and amounts to accord and satisfaction. The settlement was fairly reached.

[22] Mrs Matthews cannot proceed with her dispute over the calculation of her redundancy compensation.

### **Costs**

[23] I am minded to let costs lie where they fall. However, if the parties wish the Authority to determine costs then application for a timetable to be set should be made within 28 days of the date of this determination.

Marija Urlich

Member of the Employment Relations Authority