

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 67/09
5159399

BETWEEN	MICHAEL McFADDEN Applicant	ANDREW
AND	GORDON LESLIE FREEMAN Respondent	

Member of Authority: James Crichton
Representatives: Both parties in person
Investigation Meeting: On the papers
Determination: 22 May 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr McFadden) complains about an alleged breach of a record of settlement and the respondent (Mr Freeman) resists Mr McFadden's allegation saying there was no breach.

[2] The matter proceeded to a telephone conference between the parties on 15 May 2009 at which both parties sensibly agreed that the Authority could determine the matter on the papers.

[3] A record of settlement was entered into between the parties on 8 April 2009 at which it was agreed that Mr Freeman would pay to Mr McFadden a sum of \$750 by cheque within seven days of the date of the settlement agreement, such payment being made pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000.

[4] The cheque was hand delivered (Mr Freeman says on 17 April and Mr McFadden says on 18 April). The cheque itself was post-dated to 24 April.

Accompanying the cheque was a letter from Mr Freeman's secretary which, in rather intemperate terms, was critical of Mr McFadden for some behaviour which occurred during the employment relationship.

[5] Mr McFadden's complaint is that he was insulted by the letter from Mr Freeman's secretary and that as the letter was delivered late and contained a cheque which itself was post-dated, settlement of the employment relationship problem in terms of the record of settlement had not been achieved and he was entitled to the grant of a compliance order and the award of penalties.

Determination

[6] There can be no question whatever that Mr McFadden is absolutely correct in his contention that the settlement reached between himself and Mr Freeman was breached by the failure of Mr Freeman to keep to the appropriate and agreed timeline. Furthermore, the comments by Mr Freeman's secretary in the covering letter that went with the cheque were gratuitous and entirely inappropriate in such a communication. The Authority has no knowledge of the nature of the employment relationship problem between the parties; given this was dealt with in a mediation context, there is no reason for the Authority to be aware of those circumstances but whatever they are, Mr Freeman's secretary has done herself and Mr Freeman no service by expressing her point of view on the matter.

[7] As to the dates, Mr Freeman's argument that seven days means seven working days is nonsense. The agreement says seven days because it means seven days. If it meant seven working days, it would say so.

[8] Furthermore, even if the agreement meant seven working days (and it did not), Mr Freeman does not keep to that timetable either because, even on his understanding of events, the cheque was delivered after the seven working days had expired (thus depriving Mr McFadden of the use of the money), and to add further insult to injury, Mr Freeman's cheque is post-dated so that by the time Mr McFadden can have the use of the money, it is fully nine days after the record of settlement prescribes.

[9] In all the circumstances, I am not persuaded that any good purpose is served by making an award against Mr Freeman. Any order that the Authority might make would be extremely modest, given the factual circumstances, and would not, in the Authority's view, serve any useful purpose.

[10] Mr McFadden should be satisfied with the decision of this Authority in which he has been completely vindicated and Mr Freeman should, if he were in a similar situation again, conform to the letter of the agreement.

Costs

[11] Mr McFadden has incurred costs of \$70 in filing his claim in the Authority. Mr Freeman is directed to pay Mr McFadden that sum forthwith.

James Crichton
Member of the Employment Relations Authority