

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 503
5426346

BETWEEN JEFFREY PUTT
 Applicant

AND CHIEF EXECUTIVE
 MINISTRY FOR PRIMARY
 INDUSTRIES
 Respondent

Member of Authority: R A Monaghan

Representatives: J Putt in person
 A Scott-Howman, counsel for respondent

Investigation meeting: On the papers

Determination: 8 November 2013

DETERMINATION OF THE AUTHORITY

- A. The Ministry of Primary Industries has not breached the terms of a record of settlement reached under s 149 of the Employment Relations Act 2000.**
- B. There will be no orders for compliance.**

Employment relationship problem

[1] Jeffrey Putt and his former employer, the Ministry for Primary Industries (MPI), were parties to a record of settlement under s 149 of the Employment Relations Act 2000. Mr Putt says the MPI breached certain terms of the settlement, and seeks orders for compliance with some terms.

[2] To the extent it is necessary to identify them in addressing Mr Putt's claim, the terms in question are:

1. *These terms of settlement and all matters discussed in mediation will be kept confidential to the parties.*
2. .
3. .

4. *The respondent will pay the applicant:*
 - a. *\$.... without deduction pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000; and*
 - b. *A payment equivalent to (calculated with reference to base salary and penal rates).*
5. *The respondent will ascertain whether the applicant was paid all entitlements due to him with regard to Labour Day 2012 and leave entitlements owing to him upon termination of employment. ... If any entitlements remain outstanding they will be paid to the applicant as soon as practicable.*
6. *.*
7. *The respondent will place records in a sealed file relating to: the disciplinary process The applicant's main personal file will be amended to show ...*
8. *[statement to be made to staff]*

Clause 1 - Confidentiality

[3] After discussions between the Authority and the parties, the allegation of breach of this clause was withdrawn.

Clause 4 - Payment

[4] Payment was made to Mr Putt under this clause, but he was not satisfied that the payment under cl 4(b) was calculated correctly.

[5] During discussions between the Authority and the parties Mr Scott-Howman provided an explanation of the calculation.¹ Mr Putt has not identified an error in the calculation, or even where there might be an error, rather has maintained his dissatisfaction. He has asserted on a number of occasions that information in support was not provided to him, but I am not satisfied there has been any such failure.

[6] I now resolve the matter by saying I am not satisfied there is any evidence of error, or of any breach of clause 4.

[7] There will be no order for compliance.

Clause 5 – Holiday and leave entitlements

[8] Mr Putt queried whether he had been paid for Labour Day 2012. That matter was resolved by confirmation that payment was made.

¹ Email dated 28 August 2013

[9] Three outstanding issues were identified in discussions between the Authority and the parties. They were:

- was Mr Putt's final holiday pay calculated correctly;
- is Mr Putt entitled to be paid for time spent attending meetings with his employer during normal business hours, being hours that were not part of his normal working shift pattern, while he was under suspension;
- is Mr Putt entitled to a 'wellness' payment in respect of the year ending August 2011 and a 'wellness payment' in respect of the year ending August 2012.

Final holiday pay

[10] His interpretation of a final payslip led Mr Putt to query whether deductions had been made in respect of holidays occurring after his employment had terminated.

[11] Mr Scott-Howman explained that was not the case, rather it reflected an aspect of the operation of the electronic payroll.

[12] There was no evidence of a deduction which should not have been made. There was no evidence of breach and there will be no order for compliance.

Payment for attendance at meetings

[13] I understand this claim concerns Mr Putt's attendance at disciplinary or related meetings associated with the matters leading to the s 149 settlement.

[14] Mr Putt usually worked on a night shift, while the attendances in question occurred during the day. However I understand the attendances also occurred during the suspension imposed in association with the matters leading to the settlement. During the suspension Mr Putt was paid his base remuneration, plus penal rates, so that he would not suffer any financial loss.

[15] When I asked Mr Putt to indicate the contractual basis for the entitlement he asserts, he said first that his attendances should be treated as call outs under the

collective agreement. I do not accept this. Later Mr Putt provided his account of discussions which occurred during mediation. The Employment Relations Act effectively prevents the Authority from accepting information of that kind,² so I cannot make any determination based on it.

[16] In the circumstances I am not satisfied there is an entitlement of the kind Mr Putt asserts.

[17] There is no evidence of breach and there will be no order for compliance.

Wellness payment

[18] Wellness payments are available under the MPI's 'Wellness Programme Guidelines.' On the employee's anniversary date (in August in Mr Putt's case) and on each subsequent year of service, employees may participate in an on-line health assessment. If they participate, they are entitled to be reimbursed up to a maximum of \$180 (net) for a health, fitness or welfare initiative chosen from the list in the guidelines. The list includes options such as medical check-ups, gym membership, fitness classes and a number of items of that kind.

[19] To qualify for the wellness payment an employee must:

- complete the online assessment;
- retain and produce email confirmation of the completion;
- choose and participate in one of the initiatives in the guidelines;
- retain and produce a supporting receipt; and
- complete a claim for payment using the Employee Wellness Payroll Form.

[20] Mr Putt did not make a claim for the year ended August 2012. It is not a sufficient answer to say, as he did, that by then he had been suspended. Moreover, there was no evidence that he had completed any of the elements required to qualify for the payment. There is no entitlement to a payment.

[21] Mr Putt asserted that he made a claim for the year ended August 2011, but retained no supporting record of his own. He said he handed a claim to his team

² s 148

manager earlier in 2012, but was not able to offer any independent recollection of completing any of the elements required to qualify for the payment. There was no suggestion that he had raised the matter of any failure to pay at the time, as would be expected if a claim had been made but not met.

[22] I asked the MPI to check its records. It found no record of a claim.

[23] For these reasons I am not satisfied that a claim was made.

[24] There is no evidence of breach and there will be no order for compliance.

Clause 7 – Sealed file

[25] Mr Putt says the sealed file was not kept sealed. He relied in support on an emailed message dated 16 June 2013, purporting to forward the text of another message requesting a meeting with Mr Putt. It appears, however, that the message was forwarded in association with Mr Putt's approach to the mediation service after he became concerned about whether the terms of the s 149 settlement had been met.

[26] If this is a breach of clause 7, it is no more than a technical breach. No remedy is warranted and there will be no order for compliance.

Clause 8 – Statement to staff

[27] This matter was addressed between the Authority and the parties, and was resolved.

Costs

[28] Costs are reserved. The parties are invited to reach agreement on the matter. If they are unable to do so any party seeking costs shall have 28 days from the date of this determination in which to file and serve memoranda on the matter. The other party shall have a further 14 days in which to file and serve a reply.

R A Monaghan

Member of the Employment Relations Authority