

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Kenneth Rawlings (Applicant)
AND Sanco NZ Limited (Respondent)
REPRESENTATIVES No appearance for Applicant
Shauna McClelland, Counsel for Respondent
MEMBER OF AUTHORITY Philip Cheyne
INTERVIEW 23 September 2005
DATE OF DETERMINATION 26 September 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Ken Rawlings worked in a sales role for Sanco New Zealand Limited from about October 1981 until 1 July 2002. On that day, Sanco's business in which Mr Rawlings worked was sold as a going concern to Gabbett Machinery Limited. Mr Rawlings commenced employment with Gabbett Machinery Limited on the same terms and conditions of employment. His employment with Sanco therefore came to an end without the payment of any redundancy compensation. Nearly 3 years later, on or about 31 March 2005, Mr Rawlings was given notice of dismissal from his employment with Gabbett Machinery Limited. In May 2005, Mr Rawlings commenced separate proceedings against both Sanco and Gabbett Machinery Limited.

[2] The problem in the claim against Sanco is described as being the effect at law of an employer not paying redundancy in circumstances where the employer should have paid compensation. There is said to be an ancillary question whether the condition relating to quantum of redundancy amounts to an unjustified disadvantage personal grievance.

[3] There can be no personal grievance. Mr Rawlings did not raise any complaint with Sanco until May 2005. Understandably, Sanco has not consented to any grievance being raised outside the 90 day time limit. Mr Rawlings has not applied for leave to raise a grievance out of time and there do not appear to be any grounds for such an application. In any event, an action deriving solely from the application or operation of an employment agreement cannot be a personal grievance: see section 103 (3) of the Employment Relations Act 2000. The real issue is simply whether Mr Rawlings was entitled to any redundancy compensation under the terms of his employment agreement with Sanco. That must be resolved by identifying the terms of the employment and deciding whether he is entitled to any redundancy compensation given the circumstances referred to above. If there is a contractual entitlement to redundancy compensation, Mr Rawlings is entitled to recover that as arrears in accordance with section 131 of the Employment Relations Act 2000, notwithstanding the passage of time.

Investigation arrangements

[4] Because of the narrow issue involved, I decided I would interview Mr Rawlings and, if necessary, only then make arrangements for Sanco to give evidence. This was discussed with the representatives during a phone conference. At the time, Mr Rawlings through his representative (Mr Wall) did not object.

[5] The day before the date scheduled for the interview, Mr Rawlings through his representative lodged and served a lengthy document. It starts with advice that a review is being sought in respect of the actions of the Authority regarding the separate proceedings between Mr Rawlings and Gabbett Machinery Limited, includes a dissertation on Mr Wall's views of the law interspersed with abusive comments about several Judges of the Employment Court and Christchurch based members of the Employment Relations Authority, demands that I stand down in these proceedings and any future proceedings involving Mr Wall and advises that neither Mr Rawlings or Mr Wall will be attending until such time as the Chief of the Authority has provided another member to deal with this matter.

Bias

[6] As lodged, the statement of problem in *Gabbett* (CEA 132/05) contained much irrelevant material on Mr Wall's views about the law and some abusive material about the Christchurch Employment Relations Authority. I issued a direction that there would be no investigation of the matter until a fresh statement of problem devoid of Mr Wall's views about the law and the abusive comments was lodged. Meantime, the respondent was not to lodge any reply. No further statement of problem was lodged and in accordance with my direction, the matter is now treated as having been withdrawn.

[7] Mr Wall seems to think that the actions of the Authority in *Gabbett* and the arrangements in this matter indicate that I cannot act impartially. There is no truth in his assertion.

[8] The direction in *Gabbett* and the arrangements in this matter were intended to allow the Authority (and the respondents) to focus on Mr Rawlings' problems rather than Mr Wall's views of the law, they having been described by the Chief Judge of the Employment Court as ...*well known and entirely wrong*: see *Wall v Works Civil Construction Limited* 23/10/01, Goddard CJ, CC16B/01.

The interview

[9] Good to their word, neither Mr Rawlings nor Mr Wall attended at the time scheduled for the interview. No good cause has been shown for this failure so I will determine the matter on the basis of the material currently available.

Disposition of the problem

[10] The written employment agreement provided by Sanco says *Where the Company is sold as a going concern and the employees are retained in their positions then no redundancy payments shall be made*. Because Mr Rawlings retained his position with the new owner of the business, he was not entitled to any redundancy compensation from Sanco.

[11] For the reasons explained above, no grievance arises.

[12] Accordingly, Mr Rawlings has no valid claim against Sanco.

[13] Costs are reserved. The respondent may lodge and serve a memorandum within 14 days and the applicant may lodge and serve a reply within a further 7 days.

Good Faith

[14] I have formed the view that the lengthy document lodged by Mr Rawlings through his advocate constitutes an obstruction to the Authority in its investigation of this matter.

Philip Cheyne
Member of Employment Relations Authority