

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
OFFICE**

BETWEEN Fale Samuelu

AND Feltex Carpets Limited (in receivership) (First Respondent)
Godfrey Hirst New Zealand Limited (Second Respondent)

REPRESENTATIVES Alan Cressey for Applicant
Tony Drake for First Respondent (Conference Call only)
Geoff Bevan for Second Respondent

MEMBER OF AUTHORITY Gregory Wood

INVESTIGATION 28 November 2006
MEETING Wellington
DATE OF
DETERMINATION 28 November 2006

DETERMINATION OF THE AUTHORITY

1. This unjustified dismissal claim was filed with the Authority and served on the first Respondent (Feltex) on 24 November.
2. It was granted urgency, following a conference call and directions of Saturday 25 November, because Mr Samuelu claimed that if he was not reinstated by 30 November he would not be offered employment by Feltex's purchaser, the second Respondent, Godfrey Hirst.
3. Godfrey Hirst was added as a respondent by application dated 27 November 2006, served the same day, after it declined to offer Mr Samuelu employment with it if he was reinstated into Feltex's employment.
4. A conference call with all parties was held on the evening of 27 November, at which both Feltex and Godfrey Hirst argued that no urgency was required. In the absence of

undertakings from either Feltex or Godfrey Hirst to preserve Mr Samuelu's employment options, and following information that Feltex and Godfrey Hirst may settle their sale and purchase agreement the very next day, leading to Feltex's liquidation forthwith, I determined to commence an investigation at 8.30 am on 28 November. The investigation meeting was to deal first with the issue of whether Godfrey Hirst had made any representations that could be relied on by Mr Samuelu to claim that Godfrey Hirst had an obligation to employ him, before investigating, if necessary, the substantive grievance. The Authority accepts that this determination placed both Respondents under extreme time pressures and may have had implications for their rights to natural justice. There appeared, however, to be no alternative that would not have prejudiced Mr Samuelu's right to pursue employment with both Respondents.

5. In relation to monetary remedies claimed by Mr Samuelu, Mr Drake indicated, on behalf of Feltex, that it was prepared to hold the maximum secured level of compensation for employees under the Companies Act of \$15,000 (less any holiday pay and other entitlements already paid), in a trust account, to be paid out in accordance with any determination of the Authority.
6. In the course of the investigation meeting Godfrey Hirst, in order to resolve the issue of urgency gave the following undertaking.

“Godfrey Hirst NZ Ltd undertakes that it will not assert at any employment hearing that it was a pre-requisite to new employment with Godfrey Hirst NZ Ltd that employees were required to be employed by Feltex Carpets Ltd at the time of settlement of the sale and purchase agreement between them. Godfrey Hirst may however argue that it had not offered the Applicant employment and that the Applicant had not accepted this offer.”

7. As a result it was agreed that the claims against both Respondents no longer needed to be pursued with urgency. Mr Samuelu's claims can now also be pursued separately as between the two Respondents. Accordingly Feltex is directed to file its Statement in

Reply by 4pm 8 December. Godfrey Hirst is to file its Statement in Reply by 4pm 11 December. A conference call to deal with the claim against Feltex will be held at 9.30 am on 15 December, with the conference call for the claim against Godfrey Hirst being held at 10.30am on the same day.

8. Costs are reserved.

G J Wood

Employment Relations Authority Member