

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

CA 144/09
5278358

BETWEEN SCHIST SOLUTIONS LIMITED
 Applicant

AND RICHARD BRENDAN BLAKELY
 Respondent

Member of Authority: James Crichton

Representatives: Jim Roberts and Kate Ashcroft, Counsel for Applicant
 Damien Pine, Counsel for Respondent

Teleconference: 3 September 2009

Determination: 3 September 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] A teleconference was held on 3 September 2009. Participating were James Crichton, Authority member, Liz Allan, support officer, Jim Roberts and Kate Ashcroft, counsel for the applicant and Damien Pine, counsel for the respondent.

[2] The teleconference was arranged to deal with an application by the applicant (Schist) for urgent orders that:

- (a) Mr Peter Flint had authority to act on behalf of Schist in relation to the employment of the respondent (Mr Blakely).
- (b) Mr Blakely vacate the premises of Schist forthwith and immediately return to Schist its property including car and laptop.
- (c) Costs be fixed.

[3] Counsel advanced their arguments in relation to the application. Both accepted that there were a mix of issues in dispute between Mr Blakely and Mr Flint.

Counsel for Schist argued that, notwithstanding that mix of issues, not all of which were of an employment nature, it was available for Mr Flint to dismiss Mr Blakely, acting on behalf of Schist and that, because such an action was lawful, Mr Blakely was obligated to vacate Schist's premises. Schist said that because Mr Blakely had previously accepted Mr Flint's authority to offer him the employment, Mr Blakely could not now be heard to complain that Mr Flint lacked authority to dismiss.

[4] Conversely, Mr Blakely argued, through counsel, that the dispute between the parties was primarily a commercial rather than an employment dispute and that Schist's action was an abuse of process. Mr Blakely held 45 per cent of the shares against 55 per cent controlled by Mr Flint. Mr Flint and Mr Blakely were Schist's only directors.

[5] I concluded that, given notice of dismissal had been issued, whatever the range of issues between the parties, the only proper way forward was to assess the validity of Mr Flint's power to act and if found legitimate to direct that Mr Blakely vacate the premises.

[6] I decided that the evidence before me suggested that, in a real and commonsense way, Mr Flint had power to act for Schist. He represented the majority shareholder, could outvote Mr Blakely at a company meeting, could probably require Mr Blakely not to vote on his own employment at a directors meeting (because Mr Blakely would be *interested*) and had previously offered Mr Blakely the employment.

[7] That being my conclusion on the legitimacy of the decision to dismiss I ordered that Mr Blakely forthwith vacate Schist's premises and return its property.

[8] I declined to fix costs, which Schist had sought at \$1500. I suggested the parties urgently engage with each other, with the assistance of counsel, to seek to resolve all matters between the parties and that the question of a contribution to Schist's costs be left for resolution as part of those negotiations.

Determination

[9] I make the following orders:

- (a) I declare that Mr Flint has the authority of Schist to act in respect to the employment of Mr Blakely.
- (b) Mr Blakely is to vacate the premises of Schist forthwith and immediately return all company property including the car and the laptop.
- (c) Costs are reserved.

James Crichton
Member of the Employment Relations Authority