

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 118/09
5131151

BETWEEN ROGER (LUCKY) TE TUHI
 Applicant

AND SILVER FERN FARMS
 LIMITED
 Respondent

Member of Authority: Marija Urlich

Representatives: Helen White, Counsel for Applicant
 Tim Cleary, Counsel for Respondent

Submissions received: 5 February 2009

Determination: 15 April 2009

DETERMINATION OF THE AUTHORITY

[1] Silver Fern Farms Limited has applied to reopen the Authority's investigation that resulted in determination AA392/08 (17 November 2008). The determination is also the subject of a challenge to the Employment Court.

[2] In that determination I found Silver Fern Farms had breached a mediated record of settlement and awarded a penalty.

[3] The Authority has a discretion to reopen an investigation on terms it thinks reasonable and stay any previous order in the meantime¹. A stay on the payment of the penalty has been made.

[4] It is this discretionary power which Silver Fern Farms requests the Authority exercise in its favour. Mr Te Tuhi opposes the reopening application.

¹ Schedule 2 Clause 4 Employment Relations Act 2000

Grounds

[5] Silver Fern Farms says it is necessary for the Authority to hear from the mediator involved in the record of settlement. It says her evidence is relevant to the question of whether the record of settlement was entered. To this end Mr Cleary submits he understood that the Authority would give the parties the opportunity to provide submissions on this issue following the investigation meeting on 15 October 2008, that he emailed on 21 October 2008 the Authority to inquire as to the Authority's intention to interview the mediator in question and the matter was answered upon receipt of the determination dated 17 November 2008.

[6] Ms White submits submissions as to the relevance of the mediator's evidence and whether that evidence could be called by the Authority were made during the investigation meeting and that the Authority indicated its view that the mediator could not be called to give such evidence to the Authority.

Determination

[7] As is usual, Authority meetings are not recorded. I must rely on my notes of the investigation meeting and my recollection of events. I am assisted by counsel's submissions in this regard.

[8] During the investigation meeting of 15 October oral submissions received from Ms White and Mr Cleary included two issues, the first concerned the jurisdictional issue of calling the mediator to give evidence before the Authority and the second, if that barrier was overcome, whether such evidence was relevant. I then expressed a tentative view that I was barred from requiring the mediator to give evidence, that I would consider the matter further and would contact the parties if I required anything further from them. This is confirmed by Mr Cleary's email to the Authority inquiring if it was my intention to call the mediator. The mediator was not called. The determination was issued.

[9] The parties had a fair opportunity to put submissions to me on the points at issue and I am satisfied that this matter was determined having considered all relevant information. The application to reopen is declined.

Costs

[10] Costs are reserved.

Marija Urlich

Member of the Employment Relations Authority