

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Cushla Ngatuere White (Applicant)
AND Autohaus Rotorua Limited (Respondent)
REPRESENTATIVES The Applicant in Person
Karl Heinz Meyer - For the Respondent
MEMBER OF AUTHORITY Ken Anderson
DATE OF DETERMINATION 20 June 2005

DETERMINATION OF THE AUTHORITY

The Issue

- [1] On 31 May 2002, the parties signed a *Record of Settlement* entered into under the provisions of section 149 of the Employment Relations Act 2000 (“the Act”). The mediation was conducted by a mediator employed by the Department of Labour and he also signed the record of settlement.
- [2] The Mediator certified that:
“Before I signed the agreed terms of settlement I explained to them [the parties] the effect of s 149(3).”
The Mediator further certified that: “I am satisfied that the parties understood the effect of that subsection and have affirmed their request that I should sign the agreed terms of settlement.”
- [3] The parties to the record of settlement accepted that they understood that:
(a) Those terms are final and binding on, and enforceable by us; and
(b) Except for enforcement purposes, neither of us may seek to bring those terms before the Authority or the Court whether by action, appeal, application for review, or otherwise.”
- The above affirmation is required by section 149(2) of the Act.
- [4] At clause 2 of the agreement, it is recorded that:
“This is a full and final settlement of all matters between the parties.”
- [5] It was also agreed that:
“These terms of settlement and all matters discussed at Mediation shall remain confidential.”
- [6] On 1 November 2004, the Authority received a *Statement of Problem* from Ms White. She claims that during her employment as an Automotive Apprentice at Autohaus Rotorua, she was not paid the appropriate minimum wage.

- [7] In March 2004, Ms White sought to have a Labour Inspector investigate this matter for her but due to the fact that the parties had entered into a mediated settlement containing the above terms, the Labour Inspector, correctly, in my view, declined to take the matter further until the Authority determined the effect of that settlement as to its finality.
- [8] The position of Autohaus Rotorua is that an agreement was reached with Ms White on 31 May 2002, pertaining to full and final settlement of all matters and that the record of settlement is binding upon her. Therefore, she is not able to reopen any further claims.
- [9] I also note that correspondence from the Labour Inspector to Ms White, dated 31 March 2004, records that Ms White raised an issue relating to minimum pay entitlements on 15 April 2002, only six weeks prior to entering into the mediated settlement.

Determination

- [10] I have little difficulty in reaching a conclusion that Ms White is prevented from reopening any matter pertaining to her employment at Autohaus Rotorua, for two reasons. Firstly, the terms of the mediated record of settlement, at clause 2, are conclusive. A **full and final settlement of all matters** was reached. The plain words of the settlement do not require any interpretation. Ms White says that there was never any discussion at mediation about any minimum pay entitlements that might apply to her. I do not know if that is so or not, but apart from the fact that what was discussed in mediation is required to be kept confidential, it seems that Ms White had the matter of minimum pay entitlements on her mind just six weeks before the mediation occurred. One would assume that she had ample opportunity to raise this issue in mediation before agreeing to a full and final settlement of all matters. If she chose not to, for what ever reason, that is perhaps unfortunate, but I must conclude that she is not able to revisit the matter now. I also note that Ms White did not see fit to raise the minimum pay issue again with the Labour Inspector until nearly two years after the mediation.
- [11] Secondly, the provisions of section 149(3) of the Act are also conclusive:
- “Where following the affirmation referred to in subsection (2) of a request made under subsection (1), the agreed terms of settlement to which the request relates are signed by the person empowered to do so-
- (a) those terms are final and binding on, and enforceable by, the parties;
- [12] Therefore, under s.149(3) of the Act, clause 2 of the agreement is final and binding upon the parties and Ms White is not entitled to revisit any matter pertaining to her employment with Autohaus.

Ken Anderson
Member
Employment Relations Authority