

[4] Both parties were given the opportunity to deal with this application by written submissions and they have done so without any objection.

The issue

[5] Whether or not to reopen the Authority's investigation?

The law and the Authority's discretionary powers

[6] The application to reopen the investigation must be considered on principles and these principles were put before both parties to make submissions on. The principles are as follows:

- a. Whether or not there has been a miscarriage of justice;
- b. Whether or not there has been any unfairness.
- c. Is there anything that has been discovered after the investigation meeting that could not have been reasonably raised at the time?

The grounds relied upon

[7] Mr Burbery has requested a reopening because he says Ms Williams made misleading statements as to the number of hours worked and callouts attended and the Authority received an unfair view of the complaint. He also stated that his understanding of the Authority's decision in regard to the sums awarded meant that the determination was unfair.

[8] Ms Williams objected because Mr Burbery has not produced any new evidence and that it has taken him over a year to make his application. She also raised personal matters about Mr Burbery that are not relevant to this determination.

Determination

[9] The application to reopen the Authority's investigation is declined. My reasons are as follows:

- Mr Burbery and Ms Williams attended the Authority's investigation meeting held on 12 June 2008. They were both questioned and had the opportunity to table all relevant information including any records. They were interviewed and had every opportunity to cover off their positions on the matter and the claims.
- Subsequently, Mr Burbery has submitted information as to Ms Williams's hours of work and callouts. This was the matter considered by me during the investigation meeting. There is nothing about this information that in any way suggests that it could not reasonably been provided at the investigation meeting.
- Ms Williams's claim in her original statement of reply was denied by Mr Burbery. I determined at the time of the investigation meeting that the statement of problem and statement of reply involved two issues. These were whether or not Ms Williams was owed the sums she claimed and what were the payments made to her by Mr Burbery-petrol or wages? The information now being put forward covers these issues and I would have expected Mr Burbery to have relied on it at the time. Suffice to say when Mr Burbery presented himself at the investigation meeting his records were a mess, and he had failed to keep adequate records. Also, he failed to provide an intended employment agreement when he engaged Ms Williams to work. He did not have a written employment agreement for Ms Williams. He failed to provide wage and time records and holiday records when requested. I was required at the time to assess both parties' records and information. Nothing has changed in the parties' positions since the determination was released.
- The rates were assessed on the evidence at the time and there has been nothing new on Mr Burbery's part to suggest there has been a miscarriage of justice and unfairness. He had every opportunity to prepare for the investigation meeting and raised no issue about the unavailability of any documents that

he would have been expected to reasonably obtain for the investigation meeting. That meeting was organised on notice.

- The matters that both parties are continuing to argue about were matters that could have been challenged at the time if Mr Burbery thought the Authority's determination was wrong, or at least to have properly requested a reopening much sooner and not have waited almost a year.

[10] I therefore, decline Mr Burbery's request to reopen the investigation.

[11] There is no issue of costs to determine on this application.

P R Stapp
Member of the Employment Relations Authority