

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Fabio Palma (Applicant)
AND Innovatory Technologies (NZ) Co Ltd (in receivership) (Respondent)
REPRESENTATIVES Fabio Palma In person
No appearance for Respondent
MEMBER OF AUTHORITY Janet Scott
INVESTIGATION MEETING 7 June 2005
DATE OF DETERMINATION 8 June 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

The applicant seeks an order directing the respondent to comply with a settlement agreement resolving a personal grievance submitted by the applicant in respect to the circumstances surrounding the termination of his employment by the respondent company in December 2004.

There was no appearance at the investigation meeting by or on behalf of the respondent. I am satisfied the respondent has been served with the Statement of Problem and Notice of Investigation Meeting. The meeting was delayed to allow for the situation that the respondent had been unavoidably detained. However, as there was neither an appearance for nor contact from the respondent to explain its absence I have proceeded to hear and determine the matter in accordance with Clause 12 of the Second Schedule of the Employment Relations Act 2000.

Background

Mr Palma was employed by the respondent as an Art Director. His employment commenced in April 2004. On 12 October 2004 Mr Palma's employment was terminated by the respondent on the grounds of redundancy. Mr Palma was advised he would be paid one weeks notice. Mr Palma later discovered his job had been advertised. He submitted a personal grievance claiming his termination was both substantively and procedurally unjustified. In the event a settlement agreement in final settlement of the issue was signed off between the parties in early December 2004. That settlement agreement provided for the payment of four weeks salary to be paid to the applicant by the respondent after 10 January 2005. The respondent has not honoured the agreement and the applicant now seeks an order directing the respondent to comply with the settlement agreement.

The respondent is in receivership and the receivers have advised the Authority that there were no realisable stock or debtors at the time of receivership and that there is unlikely to be any return to the secured creditor from the company's otherwise limited assets (computers and furniture). Mr Palma has been advised of the situation but has requested that his claim be heard and determined.

Determination

I am satisfied the respondent entered into an agreement with the applicant to resolve an employment relationship problem in the nature of a personal grievance.

The agreement was not signed by a mediator pursuant to s.149 of the Act. As such it is not enforceable under s.151. Can the settlement agreement be enforced as an employment agreement pursuant to s.137 of the Act? Jurisdictional arguments have been taken over the enforcement of such settlement agreements. (*Jane Mason and Future Planning Ltd* AA 350/04). The question is currently before the Court for determination on a challenge from the Authority.

In the event no jurisdictional issue has been raised in the matter before me. The settlement in question purports to supersede 'all previous agreements, contracts and/or terms and conditions that have applied prior to the settlement agreement'. The settlement agreement is final and resolves all outstanding matters relating to the employment including, I find, the payment of notice - an entitlement under the superseded IEA. I am, therefore, taking a liberal view of the Authority's jurisdiction under s.137 (1) to order compliance with an 'employment agreement' and pursuant to s.137 I direct the respondent to pay to the applicant the sum of \$4,615 being the four weeks pay the respondent agreed to pay to the applicant pursuant to the settlement agreement between them. The respondent is to make the payment immediately.

Costs

The applicant is entitled to recover the costs associated with bringing this claim. I direct the respondent to pay to the applicant the sum of \$70 to reimburse him for the cost of the filing fee he incurred in putting this matter before the Authority.

Summary of Orders

The respondent is directed to pay to the applicant the sum of \$4,615 and \$70. Payment is to be made immediately.

Janet Scott
Member of Employment Relations Authority