Determination Number: AA 441/05
File Number: AEA 205/05

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE

BETWEEN	New Zealand Grazing Company Limited (Applicant)
AND	Bruce Fraser-Jones (First Respondent) **AND** WHG Limited (Second Respondent)
REPRESENTATIVES	C H Toogood QC, Counsel for Applicant Paul Wicks, Counsel for First Respondent Paul Wicks, Counsel for Second Respondent
MEMBER OF AUTHORITY	Vicki Campbell
INVESTIGATION MEETING	25 August 2005 26 August 2005 17 October 2005 25 October 2005
DATE OF DETERMINATION	16 November 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] New Zealand Grazing Company Limited ("NZG") is in the business of entering into contracts with dairy farmer clients to manage the rearing and grazing of heifers which are then returned to the clients farm. NZG's business operation includes the provision of a commercial bull mating service. This is done through either direct ownership or leasing of bulls, to service the heifers being grazed on client properties. The company employs six field staff, being five Service Managers and one Regional Manager. It holds about 500 contracts to manage the rearing of some 20,000 heifers.

[2] NZG employed Mr Bruce Fraser-Jones as a Service Manager in the Waikato region from 1 May 1995 to 30 September 2004. In 1995 a written employment agreement was entered into between the parties which includes provisions that:

- prohibits entering into any other employment or be engaged in any other business without prior consent, while employed by NZG (clause 5);
- prohibits disclosure or publication of any confidential information regarding the company's business affairs, finances or other transactions of the company (clause 8);
- divests all intellectual property into the ownership of NZG and confers confidentiality obligations against such property beyond the termination of employment (clause 17);
- restrains against soliciting clients or engaging in direct competition with NZG for a period of twelve months following termination of employment and restrains the solicitation of employees for a period of 6 months following termination (clause 18).

[3] In 2002 Mr Fraser-Jones was promoted to the position of Regional Manager, responsible for the supervision and co-ordination of the five Service Managers operating in the North Island.

[4] In early 2004 NZG restructured its operations and Mr Ian Wickham, a Director of NZG came back into the business as its general manager. At this time Mr Fraser-Jones' title was changed to Service Manager, however his duties remained the same.

Mr Fraser-Jones resigned from his employment on 1 July 2004 providing the requisite 3 months notice pursuant to his employment agreement.

[5] NZG claims Mr Fraser- Jones has breached the express terms of his employment agreement and the implied obligations of fidelity through the following actions:

- operating a bull grazing and trading business (Jaffa Livestock Ltd), and by planning and setting up a business, namely WHG Limited while employed by NZG;
- operating a weaner/heifer grazing business while still employed by NZG;
- acting in breach of the restraint of trade convenant in his employment agreement; and
- misusing confidential information and intellectual propery belonging to NZG.

[6] NZG also says Mr Fraser-Jones has breached his obligations to act in good faith towards his employer.

[7] Mr Fraser Jones disputes any breaches of either the express or implied terms of his employment agreement and denies he has acted in bad faith toward NZG.

[8] The issues for this determination are related solely to the issue of liability. The parties have requested, and I have agreed, that the issue of damages would be addressed to the Authority only after the issue of liability had been determined. Therefore the key issues for determination are whether Mr Fraser-Jones has breached:

- the express terms of the employment agreement?
- the implied obligation of fidelity?
- his obligation to act in good faith towards his employer?

[9] The onus is on the applicant to demonstrate to my satisfaction, on the balance of probabilities, that there has been a breach of either the express or implied terms of the employment agreement. The allegations against Mr Fraser-Jones are serious and therefore the evidence needs to be "…as convincing in its nature as the charge was grave – *Honda NZ Ltd v NZ Shipwrights Etc Union (1990)* ERNZ Sel Cas 855 (CA).

Relevant Facts

[10] Mr Fraser-Jones is 57 years old. He has had many years experience in the dairy industry working for the NZ Dairy Group and as a livestock grazier, bull farmer and dairy farmer. Mr Fraser-Jones ran two farms under the company name of Fraser-Jones Farms Ltd. Initially Mr Fraser-Jones was involved in the business of rearing Friesian bull calves to bull beef stage (18 months) and eventually in dairy heifer grazing and dealing in Jersey breeding bulls for leasing and mating with the dairy heifers.

[11] In 1987 Mr Fraser-Jones entered into a commercial relationship with NZG as a grazier. For some time Mr Fraser-Jones grazed NZG stock as well as stock of private clients. Eventually he only grazed NZG stock as this was more convenient, however, at any time he could have recommenced grazing of private stock if he so desired.

[12] During this period of time Mr Fraser-Jones also continued with his commercial bull trading activities, including the purchasing of Jersey bulls and then providing them for mating with the heifers being grazed on his properties.

Mr Fraser-Jones employment

[13] Mr Fraser-Jones commenced employment with NZG as a Service Manager in the South Waikato area. In this role, Mr Fraser-Jones developed close relationships with NZG's clients. Some of these clients were already well known to Mr Fraser-Jones as a result of his involvement in the dairy industry.

[14] After commencing his employment with NZG Mr Fraser-Jones continued to operate his commercial farming activities and signed contracts with NZG for the two years 1994-1996. NZG were well aware of Mr Fraser-Jones commercial activities at the time of his employment.

[15] In 2001 Mr Fraser-Jones changed the name of his company from Fraser-Jones Farms Ltd to Jaffa Livestock Limited ("Jaffa"). Through Jaffa Mr Fraser-Jones purchased 2 ½ year old bulls during December and January of each year, grazed them until October/November and then sold them to two livestock companies. It was common ground at the investigation meeting that coinciding with the change of company name, Mr Fraser-Jones sold his farms and moved to Hamilton.

[16] In contrast to Jaffa, NZG purchased 18 month old bulls in January of each year, and would graze them until September, until they were 2 year olds and put them out to client grazier farms to service the heifers.

[17] NZG was aware Mr Fraser-Jones had sold his farms and had moved to Hamilton. However, there was no indication from Mr Fraser-Jones that he was intending to or was continuing with his commercial activities. As far as NZG was aware, once, Mr Fraser-Jones moved to Hamilton the only commercial activities he was involved in were those which he undertook on behalf of NZG.

[18] NZG points to the Jaffa activities as being in conflict with Mr Fraser-Jones employment obligations. NZG says that Mr Fraser-Jones was employed to work on NZG business exclusively during his usual working hours and that Mr Fraser-Jones has breached this obligation in carrying out his own commercial activities during those times.

[19] Mr Fraser-Jones says that his commercial activities with Jaffa were not in conflict with his employment obligations for NZG. He says this on the basis that for the first two years of his employment he was not only an employee but also a client of NZG and that NZG were also aware of his bull trading activities during that time. I am satisfied, from the evidence provided to the Authority that Mr Fraser-Jones conducted activities for Jaffa during his usual working hours and that at least some of these activities were in conflict with this role in NZG.

[20] In 2002 Mr Fraser-Jones was promoted to the position of Regional Manager. Mr Fraser-Jones says that when he was appointed to that position a new verbal employment agreement was entered into and no restraint of trade was discussed with him at that time. NZG maintains that the

written employment agreement entered into in 1995 continued to apply to Mr Fraser-Jones except for those provisions which were altered by agreement.

[21] While Mr Fraser-Jones was appointed to a new position, I am satisfied that the terms and conditions of employment specified in the 1995 employment agreement continued to apply to Mr Fraser-Jones. Significantly one of the changes to his role was a requirement for Mr Fraser-Jones to purchase and/or organize the leasing of mating bulls to meet the requirements for spring and autumn mating. In addition Mr Fraser-Jones was also responsible for organizing and supervising the grazing for the mating bulls.

[22] Mr Fraser-Jones told me that after he took up his new role with NZG in 2002 his client contact decreased significantly. I do not accept that was in fact the case. Mr Fraser-Jones was required to source new grazing clients which required him to be the contact person for all enquiries. Also, Mr Fraser-Jones told me at the investigation meeting that he was responsible for weiner only grazing to the extent that he sourced it, stocked the farms and monitored the stock. This all required significant contact with the clients of NZG.

Mr Fraser-Jones departure from his employment

[23] In July 2004 Mr Fraser-Jones resigned from his employment and worked out a three month notice period. Mr Fraser-Jones last day of employment with NZG was 30 September 2004. Mr Ian Wickham, Managing Director, announced Mr Fraser-Jones pending departure at a management meeting on 16 July 2004. The minutes from this meeting, which were circulated to Mr Fraser-Jones, shows that Mr Wickham announced that Mr Fraser-Jones was retiring. In addition, Mr Fraser-Jones signed an Employment/Contract Termination form on 7 October 2004 which states as the reason for leaving as "retired". Mr Fraser-Jones did not rectify the misapprehension Mr Wickham was under that he [Mr Fraser-Jones] was retiring.

[24] Mr Fraser-Jones, with the support of NZG, had set up a home office from which he conducted his work on behalf of NZG. NZG paid the costs associated with the installation and maintenance of the telephone line into that home office. During July 2004 NZG advertised in the local area for grazing. The telephone numbers cited in the advertisements for potential graziers to call to make contact with NZG were those of Mr Fraser-Jones. One of the numbers was the telephone number used in his home office, the other being his NZG mobile phone number. Between July and September 2004 Mr Fraser-Jones received calls on behalf of NZG from potential graziers seeking information as a result of seeing the advertisements.

[25] Mr Fraser-Jones approached Mr Wickham during his notice period and asked if he could keep the company telephone lines belonging to NZG following the ending of his employment. Mr Wickham agreed to this, under the misapprehension that Mr Fraser-Jones was retiring and trusted Mr Fraser-Jones to divert any NZG calls received, back to the company.

[26] During his notice period Mr Fraser-Jones sought legal advice as to the enforceability of the restraint of trade clause contained in his employment agreement and established a new company called W H G Ltd. The company was incorporated on 9 August 2004.

[27] During October 2004, and following Mr Fraser-Jones departure from NZG, WHG entered into contracts with graziers to provide grazing for dairy farmer clients. At the investigation meeting Mr Fraser-Jones conceded that this business was in direct competition to NZG.

Express terms of employment

[28] NZG says Mr Fraser-Jones has breached express terms of his employment agreement in relation to exclusivity of employment; intellectual property and confidentiality; and the restraint of trade covenant.

Exclusivity of employment

[29] The employment agreement states:

> The manager shall and will throughout his/her employment devote his/her whole time and attention to the management of the Company's business and the proper control thereof. While this contract remains in force the Manager will not without the Company's prior consent enter into the employment of any other person, firm, institution or organization or be engaged in any other business.

[30] The Court has confirmed that there is a prohibition against competing with the employer directly or by working at the same time for a competitor (*Walden v Barrance* [1996] 2 ERNZ 598).

[31] As already referred to earlier in this determination it was common ground that Mr Fraser-Jones owned a farm or farms prior to commencing full-time employment and that his farming activities continued for the first two years of his employment.

[32] Mr Fraser-Jones does not dispute that he was entitled to engage in other business activities if the company had provided prior consent.

[33] The issue for the Authority is whether or not there was any implied agreement for Mr Fraser-Jones to continue with his commercial activities once he sold the farms.

[34] NZG says Mr Fraser-Jones was required, pursuant to his employment agreement to seek permission to carry on his commercial activities under the umbrella of Jaffa. Mr Fraser-Jones says he was entitled to continue his commercial activities throughout his employment because he was only doing what had previously been condoned.

[35] I accept NZG had previously condoned Mr Fraser-Jones commercial activities as a Farm owner and client of NZG. However, by 2001 Mr Fraser-Jones was no longer a client or farm owner. It was reasonable, therefore, for NZG to conclude that Mr Fraser-Jones was no longer operating any commercial activities on his own behalf.

[36] Mr Fraser-Jones was required to seek the approval of his employer before undertaking commercial activities in Jaffa Livestock Limited. He did not seek that permission but assumed that as he had been undertaking commercial activity while he owned his farms this could continue. I am satisfied, on balance, that Mr Fraser-Jones undertook a number of Jaffa activities during times when he was paid to be working exclusively for NZG.

Mr Fraser-Jones breached the express provisions in his employment agreement when he conducted his own commercial transactions under the company name of Jaffa Livestock Ltd.

Confidentiality and Intellectual property

[37] The employment agreement provided for confidentiality in the following way:

> The Manager shall not while his employment continues or thereafter, divulge to any person firm institution or organization whatsoever (and shall use his/her best endeavours to prevent the publication or disclosure of) any trade secrets or manufacturing process or any information concerning the business or finances of the Company or any of its dealings transactions or affairs. The Manager hereby agrees to indemnify the Company against all costs, damages, loss of profits, expenses or other charges in respect of any such breach.

[38] It also provides for the protection of NZG intellectual property:

> The Company and the Manager for the avoidance of any future doubt hereby covenant and agree as follows:
>
> (a) Any inventions, processes, products, developments or intellectual property of any kind whatsoever (collectively "intellectual property") that the Manager is involved with or develops in the course of their contract with the Company whether solely or in conjunction with the Company or any of it's other staff or contractors shall be the sole property of the Company.
>
> (b) The Manager shall perform all acts and/or sign all documents and papers which the Company shall request in order to protect or perfect it's rights and ownership of the intellectual property described in sub-clause (a) above.
>
> (c) During and after expiry or termination of the Managers contract with the Company the Manager shall regard the said intellectual property as secret and confidential and therefore subject to the obligations and provisions of Clause 8 herein.

[39] The duty of confidentiality following the termination of employment relates to matters amounting to or equivalent to trade secrets (*NZ Needle Manufacturers Ltd v Taylor* [1975] 2 NZLR 33). The information itself must have a necessary quality of confidentiality and there must be an unauthorized use of that information (*EIL Brigade Road Ltd v Brown*, unreported, 5 August 2004, Fogarty J, High Court Christchurch CIV2001-409-000733).

[40] Mr Fraser-Jones was involved with presentations to prospectives clients for and on behalf of NZG. These presentations included detailed explanations of the way NZG operated, including its terms and conditions which were contained in the NZG contract. The NZG contract was signed by both parties including Mr Fraser-Jones on behalf of NZG.

[41] NZG claims Mr Fraser-Jones used its confidential intellectual property in the course of setting up his business. At the investigation meeting, Mr Fraser-Jones admitted he had used NZG's Terms and Conditions document as the template for the ones he developed for WHG. Mr Fraser-Jones says that the use of this document does not constitute a breach of the agreement as the document was in the public domain.

[42] NZG says that the breach relating to the use of confidential information also relates to the information Mr Fraser-Jones had obtained during his employment about the profit margins made by NZG on each of its grazing contracts. Mr Fraser-Jones conceded that this information was confidential information. Mr Fraser-Jones was aware of the complexities of the system used by NZG and had raised this with NZG in February 2004 as something needing to be addressed. Mr Fraser-Jones told the authority that the system he was using in WHG was not as complex as NZG's system. I am satisfied that the information about the system used by NZG and therefore, how to simplify the system was confidential information.

[43] NZG says further, that the computer system designed by Mr Fraser-Jones son was based on the NZG system and that this use also constitutes a breach of confidential information. Mr Fraser-Jones son told the Authority that he and his father developed the computer program from scratch using the Microsoft Access software. While I accept that the computer program developed by Mr Fraser-Jones was not identical to the program used by NZG, I am satisfied that Mr Fraser-Jones has used confidential information relating to NZG's computer system when the WHG computer program was developed. Mr Fraser-Jones knew what was contained on the NZG database and he a reasonable knowledge of the way the system worked and the information contained on the various screens used by NZG. From this base of knowledge, he knew what information was useful and

necessary and was able to construct and design, in collaboration with his son, a program which would deliver similar reports.

I am satisfied that in setting up his business Mr Fraser-Jones used confidential intellectual property in direct breach of the express terms of his employment agreement.

Restraint of trade

[44] The employment agreement signed by Mr Fraser-Jones in 1995 included a covenant in restraint of trade. The issues for me to determine under this heading are:

- whether the restraint, when it was entered into, was reasonable in all the circumstances;
- if the restraint was unreasonable, whether it should be declared void or modified under s.8(1)(b) Illegal Contracts Act 1970.

[45] The relevant provision of the employment agreement states:

> The Manager shall not for a period of twelve months after termination of this contract for whatever reason, either directly or indirectly on their own account or for any other person or firm:
>
> (a) Solicit or endavour to solicit away from the Company any person or firm which was or is a client of the Company or who had dealt in any way with the Company during the two (2) years period immediately prior to such termination;
>
> …
>
> (c) Engage in business or other activities which are in direct competition with the Company.

[46] The law relating to covenants in restraint is regarded as being well settled. The starting point is that they are contrary to public policy and are therefore void. However, a restraint will be enforced where it is no wider than the circumstances of the case reasonably require. That reasonableness is assessed in the circumstances of the case according to the legitimate interests of the parties to the restraint and the wider public interest. Reasonableness is assessed at the time the restraint is agreed to.

Proprietary interest

[47] It is clear that in deciding whether or not Mr Fraser-Jones restraint of trade clause is enforceable I must start from the premise that such clauses are *unenforceable unless they can be justified as reasonably necessary* ***to protect proprietary interests*** *of the former employer and in the public interest.* (*Gallagher Group Ltd v Walley* [1999] 1 ERNZ 490).

[48] It is well settled that a restraint will only be enforceable to the extent that it is required to protect a proprietary interest of the employer. An employer may possess and protect a proprietary interest in trade secrets, confidential information and its business or trade connections (A*irgas Compressor Specialists Limited v Bryant* [1998] 2 ERNZ 42).

[49] A proprietary interest is the legitimate interest that the company has in its commercial relationships that have been developed (*Manchester Property Care Limited v O'Connor (No 2)* [1998] 2 ERNZ 305).

[50] In the *Airgass* case Goddard CJ, held:

> …a restraint may be reasonable if the nature of the employment is such that customers will either learn to rely upon the skill and judgment of the employee, or will deal with the employee directly and personally to the virtual exclusion of the employer, with the result that the employee will probably gain their custom on setting up in business.

[51] NZG say the restraint was necessary to protect its proprietary interest in client relationships. It was common ground at the investigation meeting that Mr Fraser-Jones had his own relationships in the farming community prior to his employment. He had held field-days on his farm which were well attended by those in the industry including NZG representatives. He also had a proven base of knowledge and expertise relating to the grazing of heifers and contracted with NZG to provide heifer grazing for NZG clients.

[52] In 1998 Mr Jim Robertson, the then Regional Manager for NZG wrote to Mr Fraser-Jones regarding a review of his salary. In his letter Mr Robertson remarks on Mr Fraser-Jones wealth of grazing experience including his experience as a grazier prior to his employment.

[53] The restraint provision is not geographically limited and is for a period of 12 months. Mr Wickham told the Authority that the 12 months was necessary to protect as many of NZG's clients as possible and that the industry operates in a 12 monthly cycle. The most obvious starting point in the cycle is November, when the largest number of weaners become available and grazing needs to be sought for those. Weaners are grazed until April when feed shortages and winter sets in. Weaner grazing can then become heifer grazing which can also lead onto provision of the bull mating service.

[54] Mr Fraser-Jones told the Authority that most graziers did not want weaners and they preferred to wait until 1 May to put heifers on their properties.

[55] Mr Fraser-Jones told the Authority that he had sought legal advice about the validity of the restraint of trade clause and his legal obligations as he didn't want to leave a sour taste when he left. He told me that he felt his name was synonymous with that of NZG and that he had been the face of the company for 10 years.

[56] I am satisfied that NZG has a proprietary interest to protect its client relationships. Mr Fraser-Jones was in a position where he had a great deal of influence over customers and as happened, they were likely to follow him to his new company.

<u>Reasonableness</u>

[57] Reasonableness is measured at the time the restraint was entered into. In determining reasonableness the scope of the restraint in time and location is also relevant. In 1995 when the restraint provision was entered into Mr Fraser-Jones was a client of NZG and provided services to NZG through his own company, Fraser-Jones Farms Ltd. At that time the restraint could not have been considered necessary to prevent Mr Fraser-Jones from competing directly with NZG. There was no evidence to indicate that in 1995 it was contemplated by either party to the employment contract the Mr Fraser-Jones personal commercial activities would change.

[58] I am satisfied that the restraint was not reasonable at the time the employment contract was entered into. I also find that the covenant goes too far. There is no limit on the geography to which the restraint applies and at the very most it should have been limited to the Waikato and Taranaki areas only. It was common ground that NZG does not operate in the South Island and that Mr Fraser-Jones has no NZG client relationships in any area outside the Waikato and Taranaki areas.

<u>Consideration</u>

[59] The covenant in restraint formed part of the employment contract at the time Mr Fraser-Jones signed the contract in 1995. As stated in *Radio Horowhenua Limited v Bradley* [1993] 2 ERNZ 1085, a distinction needs to be made between a restraint agreed at the start of employment and one imposed during employment. In the later situation Goddard CJ, found that consideration

would be expected. Consideration, if not shown on the face of the contract may be reasonably inferred from it (*M A. Watson Electrical Ltd v Kelling* [1993] 1 ERNZ 9), for example consideration may be inferred from the level of remuneration and other benefits agreed to, including the benefit of employment (*O'Sullivan v Fletcher Alluminium Ltd* [2000] 2 ERNZ 431).

[60] There is nothing expressed in the contract which refers to consideration, neither were there any discussions at the time the employment contract was entered into in relation to consideration. I accept the submission by Mr Wicks, on behalf of Mr Fraser-Jones, that the salary paid to Mr Fraser-Jones at the time the employment contract was entered into was very modest. The letters produced to the Authority indicate that while Mr Fraser-Jones received increases to his salary these increases were in recognition for Mr Fraser-Jones outstanding performance and were not related to the restraint provision.

[61] I can find nothing from which it can reasonably be inferred that consideration was passed to Mr Fraser-Jones in return for the restraint.

The restraint of trade convenant is both unreasonable and was not supported by something of value in return for the promise. I have concluded therefore, that the covenant is not a valid legal contract and is ineffective and unenforceable.

Breach of implied duty of fidelity

[62] It is an implied term of employment that the parties to the employment relationship owe each other a duty of fidelity, good faith and honesty (*Tisco Limited v Communications and Energy Workers union* [1993] 2 ERNZ 779; *Skilling v Kidd Garrett Ltd* [1977] 1 NZLR 243). The duty is an essential part of the employer/employee relationship and is owed to the employer in return for the remuneration paid to the employee (*EIL Brigade Road Ltd v Brown*, unreported, 5 August 2004, Fogarty J, High Court Christchurch CIV2001-409-000733).

[63] The implied duty of fidelity coexists with the term of the contract of employment but does not outlive it. The content of the implied term is susceptible to a fixed test and the question in each case must be whether the conduct at issue would be looked at by a person of ordinary honesty as dishonest conduct towards the employer (*Schilling v Kidd Garrett Ltd* [1977] 1 NZLR 243).

[64] Employees have an implied term under a duty of fidelity to abstain from conduct likely to do damage to the employer's business or having the potential to undermine the relationship of trust and confidence (*Walden v Barrance* [1996] 2 ERNZ 598).

[65] Mr Fraser-Jones has accepted that the private grazing of weaners and heifers in direct competition with NZG whilst employed, consititutes a breach of fidelity.

[66] I accept the submission of Mr Wicks, on behalf of Mr Fraser-Jones that the grazing of heifers for export between December 2003 and April 2004 was not in direct competition with NZG. The minutes of a management meeting show that this is not the type of business NZG was interested in, it had turned down such opportunities …from Dairy Farmers and could find no reason to accept them from anyone else.

[67] I accept the submission made on behalf of NZG that Mr Fraser-Jones was under a duty to advise NZG that he was intending to enter into competition against NZG the day after he left his employment. Mr Fraser-Jones was in a relatively autonomous position and there was a high degree of trust placed in him by his employer. Mr Fraser-Jones was the first point of contact for new clients (the advertisements contained only Mr Fraser-Jones telephone numbers, including his home

office number which he had decided before he left NZG that he would keep as his own). There was evidence that Mr Fraser-Jones kept the details of potential clients and then contacted them after 30 September 2004 and persuaded them to enter into a contract with WHG. The evidence showed that the clients believed they were dealing with NZG until they came to sign the contracts in the name of WHG.

[68] Finally, I agree with Mr Toogood's submission that Mr Fraser-Jones's attitude to his legal obligations was cavalier and deliberate.

Mr Fraser-Jones breached his implied duty of fidelity during his employment with NZG.

Conclusion

[69] As stated at the outset of this determination, I have dealt only with the issues of liability. The matter of damages and quantum of damages will be dealt with in a separate determination. To progress matters the Authority will contact the party's representatives with a view to agreeing a timetable to deal with the damages issues.

[70] In the meantime, I am of the view that, having determined the issues of liability, the parties could benefit from further mediation. Pursuant to section 159 of the Employment Relations Act the parties are directed to attend mediation in good faith in an effort to resolve the outstanding matters between them. Mediation is to take place within 20 days of the date of this determination.

Vicki Campbell
Member of Employment Relations Authority