

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Major Donald Robert Edgar Moncrieff (Applicant)

AND Her Majesty the Queen in right of Her Government in New Zealand
acting by and through the Chief of Defence Force (Respondent)

REPRESENTATIVES Major Donald Robert Edgar Moncrieff In person
Captain Matt Harding, for Respondent

MEMBER OF AUTHORITY Y S Oldfield

INVESTIGATION MEETING 30 August 2005

DATE OF DETERMINATION 31 August 2005

DETERMINATION OF THE AUTHORITY ON A PRELIMINARY ISSUE

- [1] From approximately late 1999 until early 2004, Major Moncrieff played French horn, baritone and tenor horn in an Army band. He says that he was dismissed from this role by the respondent (the Defence Force) in conjunction with the Auckland Artillery Band Association, which was second respondent in these proceedings until shortly before the investigation meeting. He has come to the Authority seeking wages and travel allowances as well as remedies for the alleged dismissal.
- [2] Major Moncrieff was not represented and prepared his own statement of problem. From it I understood his position to be that he initially played in the band as a civilian volunteer, but was later (in the capacity of band member) re-attested as a member of the armed forces. This re-attestation appeared to be the basis of his claim for remedies.
- [3] In its reply, the respondent disputed that the process of re-attestation was completed. It said that Major Moncrieff always remained a civilian volunteer in the band, and as such, he was precluded by s 6 (1) (c) of the Employment Relations Act from coming within the Authority's jurisdiction. In addition the respondent noted that if the process had been completed Major Moncrieff would in any event fall outside the Authority's jurisdiction, which extends only to civilian defence force personnel and not to sworn members of the armed forces (Section 45 of the Defence Act 1990.)
- [4] It is correct that neither volunteers nor sworn members of the armed forces fall within my jurisdiction. Unless Major Moncrieff had a civilian contract of employment with the Respondent I would be unable to assist with his problem. I decided to proceed to a meeting with the parties to satisfy myself that I had understood Major Moncrieff's claim correctly and that there was no suggestion that he had been a civilian member of the respondent's staff. That is the sole issue for determination.

- [5] Major Moncrieff was a serving member of the Territorials from 1953 until 1965. During that time he also spent six months in the regular forces. He attained the rank of Captain in the Regular Force and Major in the Territorials. In 1999 after his retirement from paid work he joined the band as a civilian volunteer. Approximately two years later, in 2002, the respondent advised civilian volunteer band members that it would prefer them to become members of the Territorials. This was consistent with current Defence Force Orders (Personnel Matters, Chapter 8) which required bandsmen to be attested Territorial Force Soldiers.
- [6] Band members were told that if they joined the Territorials, they would be paid as Gunners. Many took up the opportunity. Major Moncrieff planned to do the same. When he presented himself to be re-sworn however, he encountered a problem. He was told he would have to resign his commission as Major because it would be administratively impossible to pay him as a Gunner without him dropping in rank.
- [7] While he had no problems with receiving the pay of a Gunner he was not prepared to give up his commission. He continued on as a volunteer for two more years, debating the issue with the respondent and presenting pay sheets but receiving no payment. Then, in 2004, he was replaced by another horn player.
- [8] There is an important issue between the parties around whether the attestation process was complete before Major Moncrieff was told that he would have to resign his commission. There are also issues around him being dropped from the Band. However, when I questioned Major Moncrieff he told me that he was not suggesting that he was a civilian employee of the Defence Force. He says he was engaged jointly by the New Zealand Defence Force and the Auckland Artillery Band Association as a re-attested officer.
- [9] I heard nothing else to indicate that Major Moncrieff might have had a civilian agreement of service with the Respondent. As for the Auckland Artillery Band Association, Major Moncrieff withdrew his claims against them just prior to the investigation meeting but told me he was considering whether to resume action against them. I do not have all the information I would require to determine whether the Auckland Artillery Band Association employed Major Moncrieff but what he has told me so far does not indicate that this was the case.
- [10] Major Moncrieff has some genuine and important concerns he would like to address with the respondent. Unfortunately this is not the right forum in which to air them. By his own account his problem is outside the jurisdiction of the Authority. I can do nothing more to assist him with it.

Costs

- [11] The respondent has a period of 28 days in which to make submissions on this issue. Thereafter Major Moncrieff will have a further 28 days in which to respond.

Y S Oldfield
Member of Employment Relations Authority