

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Anesone Elisara (First Applicant)
AND Salamita Nimo (Second Applicant)

AND Alfords Door Centre Limited (Respondent)

REPRESENTATIVES Paul Pa'u, Counsel for First Applicant
Paul Pa'u, Counsel for Second Applicant
No appearance for Respondent

MEMBER OF AUTHORITY Dzintra King

INVESTIGATION MEETING 18 May 2005

EVIDENCE SUPPLIED 5 July 2005
24 August 2005

DATE OF DETERMINATION 12 September 2005

DETERMINATION OF THE AUTHORITY

The applicants, Messrs Anesone Elisara and Salamita Nimo, claim that they were unjustifiably disadvantaged by the respondent, Alfords Door Centre Ltd. A penalty for failure to provide an employed agreement is also sought.

Mr Nimo worked for the respondent for 15 years and Mr Elisara for 26 years. They were employed as joiners. It appears that in 2002 Alfords Door Centre Limited ceased to be the applicants' employer and the business was taken over by Alford Doors Ltd, a fact which did not become clear until I received the new employment agreement. Neither of the applicants had any formal notice that their employer was about to change. They said they found out about the sale from one of the women working in the office. Both men were very unsure about what was happening and what the sale would mean for them.

They said Mr Robert Alford, the director, refused to speak to them and when they were forced to obtain the services of a solicitor, Mr Alford shouted at and berated them, saying they would never get any money from him and he would fight them.

The sale took place close to Christmas 2002 and both applicants said they were extremely worried about whether they would have jobs and whether they were entitled to redundancy compensation.

Mr Pa'u wrote to the respondent on 13 November 2002 asking for an urgent response and seeking a copy of the latest employment agreement for Mr Elisara. Mr Pa'u wrote again on 6 January 2003 seeking a meeting to resolve the issue; and then again on 23 July 2004. By this time Mr Alford had

gone to Australia and Mr Pa'u was dealing with Mr Alford's solicitor. Mr Pa'u advised that the matter was still outstanding and his clients wanted mediation. On 5 October 2004 Mr Pa'u wrote again saying that there had been no response and suggesting dates for an urgent mediation. A Statement of Problem was filed on 25 February 2005. Mediation had not taken place. Given the lengthy history of this matter and the failure of the respondent to file a Statement in Reply I decided that it would be more expeditious to set the matter down for a hearing.

Despite having been served with the Notice of Hearing the respondent did not appear. I therefore heard the evidence of the applicants and their witnesses.

During the hearing it was readily evident that although nearly two and a half years had passed since the events precipitating the grievance, both applicants were deeply affected by the manner in which they had been treated.

Pursuant to s.122 Employment Relations Act 2000 the Authority can determine that the grievance is other than the one filed. I think that this matter is both a disadvantage case and an unjustified dismissal. Staff cannot be sold as appurtenances when a business changes hands. The disadvantage was a failure to consult about the prospective redundancies and to act in good faith by talking to two very longstanding employees about what their future might be. This caused great distress and uncertainty to both applicants. Their wives gave evidence about this. They said they did not even know if they had jobs until they went in to clear up and were told by the new owner that there was employment, but the contracts offered did not make provision for annual bonuses or tool allowances. Both applicants were also unjustifiably dismissed.

Remedies

The applicants have sought \$10,000 compensation each pursuant to s.123 (1) (c) (i). Given the level of distress still clearly being evidenced by the two applicants and their length of service the respondent is to pay to each applicant the sum of \$10,000.

At the time the applicants were employed their employment would have been covered by the relevant award. I have checked these and the award made no provision for redundancy compensation. A penalty has been sought for failure to supply an employment agreement. The provisions in the Act relating to penalties and employment agreements do not apply to a situation where there is an employee of longstanding who already has an employment contract.

Costs

If the applicants wish to seek costs a memorandum should be filed within 28 days of the date of this determination. The respondent should file a memorandum in reply within 14 days of receipt of the applicants' memorandum.

Dzintra King
Member of Employment Relations Authority