

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 202  
5564746

BETWEEN

TE REO IRIRANGI O NGA  
RAUKAWA TRUST BOARD  
T/A RAUKAWA FM  
Applicant

A N D

ROSINA HAUITI  
Respondent

Member of Authority: Anna Fitzgibbon

Investigation Meeting: On the papers

Date of Determination: 3 July 2015

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] On 30 June 2015 the applicant, Te Reo Irirangi o Nga Raukawa Trust Board (the Trust Board) filed an application in the Employment Relations Authority (the Authority) seeking compliance by the respondent, Ms Rosina Hauiti with a settlement agreement reached between the parties on 25 May 2015. Settlement was reached following a Judicial settlement conference in the Employment Court.

[2] The question for the Authority is whether or not it has jurisdiction to issue a compliance order in respect of this particular settlement agreement. It is an important question of law. For the reasons that follow, it is my view it is a matter which should be removed to the Employment Court.

**Background facts**

[3] Ms Hauiti was employed by the Trust Board as a General Manager until her dismissal on 4 December 2013.

[4] Following her dismissal, Ms Hauiti raised a personal grievance and subsequently filed a Statement of Problem in the Employment Relations Authority.

An investigation meeting was held and determination was issued by the Authority on 13 January 2015.<sup>1</sup> A further determination as to costs was subsequently issued by the Authority.<sup>2</sup>

[5] On 9 February 2015, Ms Hauti filed a statement of claim in the Employment Court challenging the determinations of the Employment Relations Authority. The claim was defended by the Trust Board.

[6] On 25 May, the Trust Board and Ms Hauti attended a judicial settlement conference at the Employment Court in Auckland.

[7] At the judicial settlement conference Ms Hauti and the Trust Board agreed terms of settlement in respect of Ms Hauti's proceedings filed in the Employment Court challenging the determinations of the Authority.

[8] The parties signed a deed of settlement on 25 May 2015. One of the terms of the settlement was that the parties consented to the Employment Court granting an order that the Authority determination be set aside including the costs determination.

[9] On 26 May 2015, Chief Judge Colgan issued a judgment which stated the following:

*[1] The plaintiff's challenges to the Employment Relations Authority's determinations in these proceedings have been settled.*

*[2] The parties' terms of settlement are confidential to them and are contained in a written agreement to be sealed up and held on the court file. These terms of settlement may not be seen or disclosed except for enforcement purposes or otherwise without the consent of a Judge.*

*[3] The Authority's determinations are set aside and no issue of costs arise between the parties.*

*G L Colgan  
Chief Judge*

*Judgment signed at 10am on Tuesday 26 May 2015*

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<sup>1</sup> [2015] NZERA Auckland 10 5440837

<sup>2</sup> [2015] NZERA Auckland 108

[10] Shortly following the signing of the deed of settlement and the issuing of the Judgment by the Employment Court, Ms Hauiti notified the Trust Board that she would not be complying with the settlement agreement.

[11] The Trust Board seeks a compliance order to be issued by the Authority pursuant to s137 of the Employment Relations Act 2000 (the Act) requiring Ms Hauiti to comply with the deed of settlement.

### **Relevant provisions of the Act**

#### *Section 161*

[12] Section 161 of the Act confers exclusive jurisdiction on the Authority

*(1).....”to make determinations about employment relationship problems generally, including-*

*(a) disputes about the interpretation, application, or operation of an employment agreement:*

*(b) matters related to a breach of an employment agreement: .....*

*(n) compliance orders under section 137: .....*

*(r) any other action (being an action that is not directly within the jurisdiction of the court) arising from or related to the employment relationship or related to the interpretation of this Act (other than an action founded on tort).*

[13] Under s137(2) of the Act, the Authority may require a party to comply with certain provisions, orders, determinations, directions or requirements. The power to make such a compliance order applies where a party *has not observed or complied with any provision of any employment agreement<sup>3</sup> ....or any terms of settlement or decision that section 151 provides may be enforced by compliance order....<sup>4</sup>*

[14] Section 151 applies to ...”*any agreed terms of settlement that are enforceable by the parties under section 149(3)”*

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<sup>3</sup> Section 137(1)(a)(iii)

<sup>4</sup> Section 137(1)(a)(iii)

## **Deed of settlement -26 May 2015**

[15] The settlement agreement between the parties was not entered into pursuant to s.149(3) of the Act. The relevance of this is that a compliance order under s.137 can only be issued by the Authority, it seems, to enforce terms of settlement under s.149(3) of the Act.

[16] The Court of Appeal in *JP Morgan Chase Bank NA v. Robert Lewis*<sup>5</sup> very recently considered the exclusive jurisdictions of the Authority and the Employment Court under the Act, in circumstances where a settlement agreement was entered into by the parties to settle a personal grievance. In those circumstances, the respondent, Mr Lewis, agreed to resign in return for certain payments to be made by his then employer, the applicant, JP Morgan Chase Bank NZ (*JP Morgan*). As in the current case, the settlement reached was not pursuant to s.149 of the Act.

[17] The particular facts surrounding the entering into of the deed of settlement in the current case differ from that in the *JP Morgan* case.

[18] In the current case, Ms Haiti was no longer employed by the Trust Board and the Authority had determined her personal grievance claims. It was the proceedings filed by her in the Employment Court that were then subject to a settlement agreement between the parties and a subsequent judgement of the Employment Court. This is a different factual scenario to that in *JP Morgan* but similar questions as to the exclusive jurisdictions of the Authority and Court arise.

[19] Much of the discussion in the *JP Morgan* case related to whether or not the settlement agreement reached between the parties was a variation of an existing employment agreement or a standalone contract outside the employment relationship. The Court of Appeal found the latter to be the case.

[20] The Court of Appeal stated:

*[65] ....we think it is clear that the settlement agreement was a new agreement, intended by the parties to replace the employment agreement and operate as a stand-alone statement of their obligations to each other after Mr Lewis ceased to be employed by the bank"*

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<sup>5</sup> CA587/2013, [2015] NZCA 255

[21] The Court reviewed the terms of the settlement agreement and concluded that it should be regarded as:

*[74] ...replacing the employment agreement and as governing, on its own, the relationship between the parties after the cessation of Mr Lewis' employment. Since the settlement agreement cannot be regarded as an "employment agreement" for the purposes of the definition in section 5 of the Act, the Authority did not have jurisdiction to deal with the dispute under section 161(1)(a) or (b) of the Act.*

*[75] Further, the Authority did not have jurisdiction under section 161(1)(n) of the Act: it could not have issued a compliance order under section 137(2), since this was not a case where there was non-compliance with a provision of an "employment agreement" (section 137(1)(a)(i)) and no other provision in section 137 authorised a compliance order under that section.*

### **Employment Court Judgment -26 May 2015**

[22] The other issue in the current case which differs from *JP Morgan* is that the Employment Court issued a Judgment on 26 May following a Judicial Settlement Conference and the conclusion of a deed of settlement. The Judgment records the fact of settlement and that the Authority's determinations are set aside.

[23] The Judgment does not include in its body that it is an "order...or requirement" of the Court. Does this mean the Authority therefore, cannot require its compliance, as an "order" or "requirement", under s137(2) of the Act?

[24] The issues raised in the current case and in *JP Morgan* are sufficiently important for this matter to be removed to the Employment Court, in my view. The current case concerns issues as to the extent of Authority's and the Court's exclusive jurisdictions.

### **Objects of the Act**

[25] It also concerns in my view, the overriding objects of the Act which require that there be a focus on parties resolving employment relationship problems themselves promptly<sup>6</sup> and that mediation is the primary problem solving mechanism<sup>7</sup>.

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<sup>6</sup> Section 143(b)

<sup>7</sup> Section 3(a)(v)

[26] The Act emphasises the need for matters to be dealt with by the “*specialist decision-making body, generally, ...before any higher court exercises its jurisdiction in relation to the investigations...*”<sup>8</sup>.

[27] The question arises as to what is intended by those provisions if a settlement agreement entered into following a judicial settlement conference convened by the Employment court and following a judgment of the Employment Court, can only be enforced in a Court of civil jurisdiction?

**Removal of matter by the Authority of its own motion**

[28] I am of the view this is a matter which should be removed to the Court on the grounds specified in s178(2)(a) and (d) of the Act.

[29] The importance of the issues which are likely to arise in the matter other than incidentally persuade me this is a case which should be removed to the Employment Court pursuant to s178(1) of the Act.

[30] I order the matter to be removed to the Court pursuant to section 178(1) of the Act.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**

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<sup>8</sup> Section 143(fa)