

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA  
TAIMAHI ŌTAUTAHI ROHE**

[2024] NZERA 549  
3276379

BETWEEN CHRISTINE PETERS  
Applicant

AND MARLBOROUGH FREE  
KINDERGARTEN  
ASSOCIATION  
INCORPORATED  
Respondent

Member of Authority: Antoinette Baker

Representatives: Maryline Suchley, advocate for the Applicant  
Paul Robertson and Ashley Wainstein, counsel for the  
Respondent

Investigation Meeting: 18 June 2024 at Blenheim

Submissions received: 11 June 2024 and on the day

Last information received: 24 June 2023

Determination: 11 September 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Ms Peters was employed by the respondent (MKA). In a statement of problem lodged 24 February 2024 she seeks to bring grievance claims for unjustified disadvantage in relation to MKA's failure to provide her with breaks<sup>1</sup>; blocking her access to workplace systems; and 'repeated and unwanted behaviours' directed at her by two managers of MKA which was 'exacerbated' by MKA's alleged failure to investigate her claims about the workplace.

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<sup>1</sup> Employment Relations Act 2000, s 69ZD.



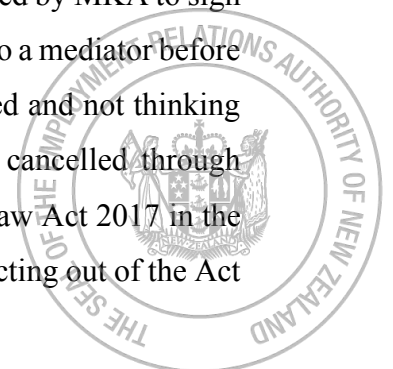
[2] Ms Peters also claims that MKF breached its duty of good faith to her and that she was unjustifiably dismissed when MKF paid to her a final pay on 21 December 2023 saying this was ‘effectively a sending away.’ She challenges her alleged dismissal on both procedural and substantive grounds.

[3] Ms Peters seeks the following remedies:

- a. Compensation of \$30,000 under s 123 (1)(c)(i) of the Employment Relations Act 2000 (the Act) for humiliation, loss of dignity, and injury to feelings;
- b. An arrears for breaks (not quantified) during her employment;
- c. Penalties for breach of her employment agreement and of good faith;
- d. Costs and the filing fee.

[4] MKA by way of its statement in reply raised that Ms Peters signed a binding settlement in October 2023 (settlement document) that agreed upon signing to settle all matters between them irrespective of whether a mediator signed off on the agreement under s 149 of the Act. MKA says Ms Peters is prevented from bringing her claims including that it had relied on the authority of the union representative to represent her in negotiations towards the settlement document and had then, upon Ms Peters signing, relied on it to its detriment including paying her unworked leave until December 2023 and then her final pay. MKA says it is unconscionable for Ms Peters to now resile from her agreement, and in legal defences says that the parties reached ‘accord and satisfaction’ and that Ms Peters is ‘estopped’ from now bringing her claims.

[5] In response to the above it is submitted variously for Ms Peters that the settlement document was not enforceable because the mediator did not sign it; that the Authority cannot enforce a ‘resignation’ and prevent Ms Peters bringing her grievances; that Ms Peter’s union representative did not communicate or represent her as she wished so there was ‘no meeting of minds’; that she felt pressured and coerced by MKA to sign the settlement document; that she did not have the benefit of talking to a mediator before signing the settlement document; that when signing she was stressed and not thinking straight; that the document did not settle a ‘dispute’ and can be cancelled through misrepresentation provisions under the Contract and Commercial Law Act 2017 in the civil jurisdiction; that the settlement document was a form of contracting out of the Act



that was prohibited under s 238 of the Act; that MKA has pursued the negotiation and signing of settlement document in ‘bad faith’ for its own benefit because if she had stayed in her employment the subsequent restructuring process that MKA undertook would have resulted in her redundancy and this was an expense MKA sought to avoid given her length of service; and that MKA was investigating allegations against her as personal retaliation because she had earlier complained about matters in the workplace.

[6] This determination deals only with the threshold issue of whether Ms Peters can proceed with her claims.

### **The Authority’s Investigation process**

[7] I held a phone conference call with the representatives to attempt to clarify the issues, evidence, and the process for the investigation of the preliminary matter. I issued directions reflecting the issues I would focus on to determine whether Ms Peters could proceed with her claims.<sup>2</sup>

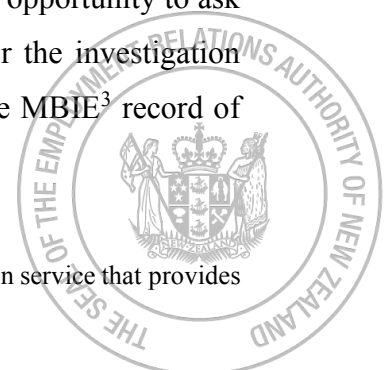
[8] After Ms Peters lodged and served her evidence, counsel for the respondent asked that I request further evidence relating in particular to Ms Peter’s representative having been emailed the disputed settlement document before Ms Peters signed it. I declined this request after giving the representative for Ms Peters an opportunity to respond. I indicated that my role allowed me to call for further evidence after the investigation meeting if necessary. I did not eventually consider a need for this. The respondent as a result of the above request was given a short extension of time to lodge and serve evidence in reply which it did.

[9] I held an investigation meeting. On oath or affirmation, I asked questions of Ms Peters; Ms Naus, general manager of MKA; and Ms Spence a casual employee of MKA and someone directly involved in negotiating the settlement document with the union representative for Ms Peters. The respective representatives had the opportunity to ask questions of all witnesses and then to provide submissions. After the investigation meeting I sought further information from Ms Peters to clarify the MBIE<sup>3</sup> record of

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<sup>2</sup> Directions of the Authority dated 17 April 2024.

<sup>3</sup> The Ministry of Business Innovation and Employment that services the mediation service that provides mediators to certify employment settlement agreements under s 149 of the Act.



when the settlement document was lodged with the service and the dates the mediator contacted Ms Peters. Once this information was obtained from MBIE by Ms Peters, and provided, being uncontentious, I reserved my determination.

[10] As permitted by s 174E of the Act, this determination has stated findings and expressed conclusions as necessary to dispose of the matter. It has not recorded all evidence and submissions received.

**Does the settlement document signed by the parties prevents Ms Peters continuing any or all of her claims in the Authority?**

[11] Section 149 of the Act provides a statutory mechanism for parties to end their employment relationship problem with a full and final binding recorded settlement involving a prescribed process signed off by an authorised mediator. However, that does not mean that parties cannot also be bound in the employment context by agreements they reach that have not been signed off through this process.

[12] The Employment Court has described the effect of a section 149 settlement as meaning that the ‘only significance of the request to the mediator was that the provisions of s 149(3) would apply’<sup>4</sup>. These provisions include specific statutory avenues for enforcement for failure to meet obligations that are not available for a non-section 149 settlement. This may for example include penalty sanctions for noncompliance which in the event a party does not further comply with a compliance order made in the Authority can include Employment Court sanctions that include imprisonment and sequestration of assets.<sup>5</sup>

[13] While the Court of Appeal<sup>6</sup> decided that a settlement agreement not signed by a mediator under s 149 was in effect a variation to the employment agreement and in that case related to matters that occurred after the employment ended therefore ousting the specialist employment jurisdictions, the Supreme Court<sup>7</sup> has subsequently held that for matters to be ‘a problem that relates to or arises out of the employment relationship’:

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<sup>4</sup> *Penney v Fonterra Co-operative Group Limited* [2011] NZEmpC 462, restated in *Singh v Trustees of Wellington Rudolf Steiner Kindergarten Trust* ERNZ 228 at [20].

<sup>5</sup> Employment Relations Act 2000, s151(1)(a),s137(1)(a)(iii); and s140(6).

<sup>6</sup> *JP Morgan Chase Bank NA v Lewis* [2015] NZCA 255.

<sup>7</sup> *FMV v TZB* [2021] NZSC 102.



All that matters is whether the controversy arose during the course of the employment relationship and in the work context.<sup>8</sup>

[14] Here it is submitted for Ms Peters that the settlement document she signed cannot be valid because it was not signed off by a mediator under s 149 of the Act. Based on the above I do not accept this submission.

[15] It is further submitted that Ms Peters can claim to cancel the settlement document in the civil courts. Based on the above I also do not accept this in relation to saying there was no dispute to settle. This is because the settlement document arose from a ‘controversy’ occurring during the employment being that Ms Peters was stressed and unhappy about an investigation process that MKA commenced including allegations made or indicated as being further considered. She then through her union representative negotiated to resign in exchange for financial reward and a record of service acknowledging other non-financial terms including mandatory reporting by the MKA when an employee resigns. To the extent that the submission suggests there is no jurisdiction to deal with the validity of the settlement document here I do not agree particularly, as is submitted for the respondent, there is a broad notion of employment relationship problems described by the Supreme Court in *FMV*.<sup>9</sup>

[16] It is further submitted that the settlement document contracts out of the Act which is not allowed under s 238 of the Act. This is expressed on the basis that there was no dispute, and the settlement document was not an employment agreement. I have already considered above that the settlement document resolved an employment relationship problem. I do not accept this submission assists me.

*‘Estoppel’ and ‘accord and satisfaction’*

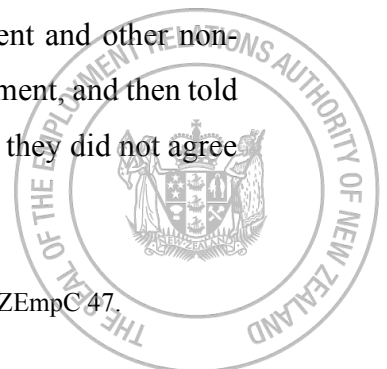
[17] The Employment Court<sup>10</sup> has found that the defence of ‘estoppel’ to a party reneging on an agreement not signed off by a mediator under s 149 can be successful. This was where an employee signed a settlement document that they had negotiated as to key terms. They had union representation prior to signing. The employee received without objection (or later offer to repay) the compensatory payment and other non-financial terms (including a reference) set out in the settlement document, and then told the mediator soon after when contacted under the s 149 process that they did not agree

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<sup>8</sup> Above at [93].

<sup>9</sup> As above at note 7.

<sup>10</sup> *Singh v Trustees of the Wellington Rudolf Steiner Kindergarten Trust* [2017] NZEmpC 47.



to the terms in the settlement document.<sup>11</sup> The Court found that an ‘estoppel’ arose which prevented the employee continuing to bring claims against the employer based on the established principles from ‘numerous decisions’ of the civil courts.<sup>12</sup> Those principles can be summarised as:

- a. a party to an agreement creates a belief in the other party that they agreed by their conduct or words;
- b. that the other party reasonably relied on the belief to their detriment; and as a result
- c. it would be unconscionable for the employee to then depart from that belief or expectation by continuing to bring claims about what had been agreed as settled.

[18] The Employment Court<sup>13</sup> in the same case as above also applied the defence of ‘accord and satisfaction’ being that:

- a. there is a genuine dispute between the parties and
- b. a ‘meeting of minds’ as to the agreement or
- c. where one party acts in such a way to induce the other to think that money (or other consideration) is taken in satisfaction of the claim.<sup>14</sup>

#### *The settlement document*

[19] It is not in dispute that the settlement document was signed by both parties, Ms Peters on 18 October 2023 and Ms Naus for MKA on 19 October 2023. It contains a list of clauses recording terms relating to the end of Ms Peter’s employment with MKA. The following clauses are particularly relevant to the preliminary issue about the finality of what was agreed:

Clause 15: In reaching this Agreement the Parties confirm that neither party has agreed to forgo minimum entitlements (money payable under the Minimum Wages [sic] Act 1983 or Holidays Act 2003) as defined in the Employment Relations Act 2000. ...

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<sup>11</sup> As above upholding the Authority’s determination that disallowed Ms Singh’s grievances to continue because she had reached a non 149 approved settlement: *Singh v Trustees of Wellington Rudolf Steiner Kindergarten Trust* [2016] NZERA Wellington 64 (Member MacKinnon).

<sup>12</sup> The example given by the Court was *Wilson Parking New Zealand Limited v Fanshawe 136 Ltd* [2014] 3 NZLR 567.

<sup>13</sup> Above at note 10.

<sup>14</sup> *Graham v Crestline Pty Ltd* [2006] NZEmpC 93, Colgan J.



Clause 17: This is the full and final settlement of all matters, claims and issues (whether or not yet known) between the Employer and the Employee arising out of their employment relationship, except for any future proceedings undertaken for the purpose of enforcing this agreement or otherwise relating to a breach of this agreement.

Clause 18: Irrespective of whether the process under section 149 of the Act has been completed, the parties agree that the agreement is binding and enforceable once both parties have signed the agreement.

Clause 19: [after a paragraph about how the agreement can be electronically in separate parts one agreement, something that does not apply here] ...

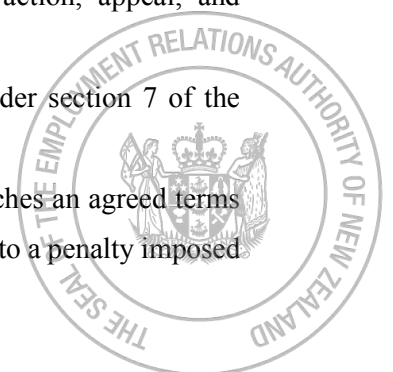
We request a mediator from the Ministry of Business Innovation & Employment to sign these terms because the employment problem between us has been resolved and we wish to be final, binding, and enforceable on us.

[space for date and signatures of 'Applicant' and 'Respondent']

[20] The end of the settlement document is in a different format to the above and reflects what can be expected in an agreement that parties seek to have signed off by a mediator under s 149 of the Act. The section under this part of the settlement document also has space for the same signatures at the end of it. There is also a section for the mediator to make a statutory required declaration and sign. The full text is:

We confirm that we fully understand that once the mediator signs the agreed terms of settlement:

1. The settlement is final and binding on and enforceable by us;
2. Except for enforcement purposes, neither of us may seek to bring those terms before the Authority or Court whether by action, appeal, and application for review, or otherwise; and
3. The terms of the settlement cannot be cancelled under section 7 of the Contractual Remedies Act 1979; and
4. That section 149(4) provides that a person who breaches an agreed terms of settlement to which subsection (3) applies is liable to a penalty imposed by the Authority.



[21] The wording reflects the process under s 149 of the Act. In signing the settlement document both parties signed all the spaces indicated including the part that confirms the mediation process and its effect. The mediator did not sign the settlement document having contacted Ms Peters twice in December 2023 after the document was lodged by Ms Peters as the recorded name of the submitter (but I accept as likely by the union representative) on 13 December 2023.<sup>15</sup> This was just under two months after the union representative communicated to MKA on 18 October 2023 that they would file the document ‘with the mediation service.’<sup>16</sup>

*How the settlement document came to be signed by the parties*

[22] The settlement document came into existence at a time that MKA had commenced an investigation into things it had alleged against Ms Peters as its employee. This process did not conclude. No inference should be taken from this determination about its outcome.

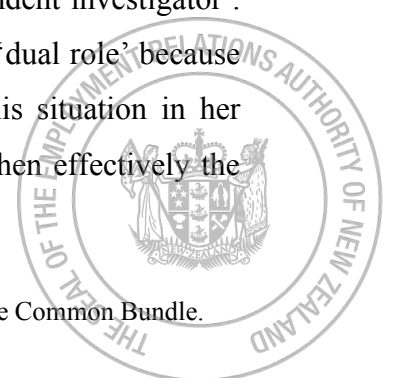
[23] Soon after the investigation process commenced, MKA received confirmation from Ms Peters’ union representative that they were acting for her. The union representative asked for discretionary paid leave due to Ms Peters being stressed about the commencement of the investigation. MKA granted this request for five days. I have not named the union representative because they did not take part in these proceedings. Their quality of representation, something Ms Peters puts throughout her evidence as not acceptable to her, is not something I have to determine. However, it is necessary to consider written communications from or to that person as well as evidence of the parties for me to be able to consider whether or not MKA likely relied on the union representative to have Ms Peter’s authority to act and negotiate the settlement document for her.

[24] By this time Ms Naus appointed Ms Spence as an ‘independent investigator’. Ms Spence in her oral evidence explained that this soon became a ‘dual role’ because Ms Naus had to take bereavement leave. Ms Naus confirmed this situation in her evidence. I accept this was the case at the time. Ms Spence was then effectively the

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<sup>15</sup> Confirmation from MBIE via Ms Peters after the investigation meeting.

<sup>16</sup> Email from union representative to Ms Naus, 18 October 2023 at page 25 of the Common Bundle.



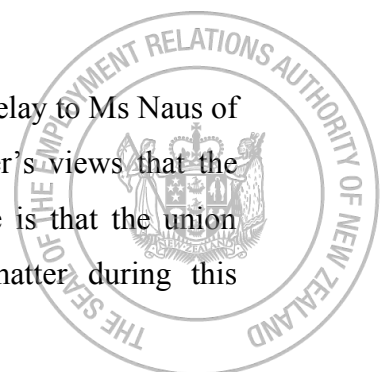


front for MKA in communicating with the union representative while keeping Ms Naus updated about progress. Ms Spence had previously worked for the same union that Ms Peter's representative worked for. Ms Spence describes her relationship with MKA as a 'casual employee' in what I understood from her evidence to be provision of human resource advice and support, a type of 'whatever they needed' type of role.

[25] While it is submitted for Ms Peters that Ms Spence was not impartial in the investigation process that commenced I found her evidence to be straight forward about her interactions with the union representative and there is nothing to show me she understood that Ms Peters had not given the union representative authority to speak and negotiate on her behalf. I also accept Ms Spence's evidence that she had positive interactions with Ms Peters in the past and was concerned about her wellbeing in the investigation process. She supported paid discretionary leave being granted when she relayed this request to Ms Naus following which MKA granted this.

[26] On 25 September 2023 Ms Spence emailed Ms Naus in an email headed 'UPDATE FYI.' This included an update about Ms Spence's discussions with the union representative. She recorded two meetings had occurred by then, on 22 and 25 September 2023. Her evidence includes other phone discussions having occurred. There are no written records of what was said in these. From the two referenced meetings it shows that Ms Spence had not completed her investigation by that stage but had expressed a view to the union representative based on three matters much of which related to things the MKA had still not fully formulated as to allegations or put to Ms Spence at that stage. I take from this record of the conversation that it could be described as recording a 'cards on the table' type of communication on behalf of MKA to the union representative which I accept from what is before me was something asked for by the union representative on Ms Peter's behalf. Ms Spence makes comment in her update letter to Ms Naus that she relayed to the union representative, 'however as I have not yet received a response from [Ms Peters] I am unable to draw a final conclusion at this stage.'

[27] The above 25 September 2023 letter includes Ms Spence's relay to Ms Naus of the response she gave to the union representative about Ms Peter's views that the investigation was targeting her personally. Ms Spence's evidence is that the union representative invited MKA to make an offer to settle the matter during this

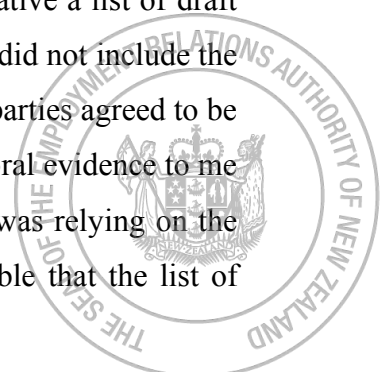


conversation and the offer made by Ms Spence is recorded in this same updating email to Ms Naus. I find it reasonable to describe the offer as an exit package.

[28] By 27 September 2023 Ms Naus and Ms Spence's evidence is that the union representative communicated what I would call a verbal conditional acceptance of the 'offer' but that Ms Peters wanted to be paid a lump sum (tax free) compensatory payment under s 123(1)(c) of the Act rather than a resignation followed by a taxed salary based on not working to a final pay in December 2023. I accept Ms Naus's evidence as likely that a lump sum compensatory payment was rejected by MKA on the basis that she considered MKA had done nothing wrong. That this lump sum was likely what Ms Peters wanted is supported by her later emails to her union representative before she signed the settlement document on 18 October 2023. That the matter was raised by the union representative and rejected by MKA is supported by the response that the union representative emailed to Ms Peters on 13 October 2023 being that this had already been rejected and 'so we are not able to change this to a section 123(1)(c)(i) payment.' Despite this, Ms Peters then went on to sign the settlement document without this change being made.

[29] Ms Naus's evidence is that Ms Spence called her on 29 September 2023 and conveyed that the union representative had verbally confirmed Ms Peter's acceptance of MKA's offer and invited MKA to draft 'a settlement agreement' to consider. It is clear from the above that Ms Peters after this time had continued to express disagreement with what she eventually signed but this was to her union representative and not to MKA.

[30] Ms Naus's evidence includes that she was a bit surprised with how quickly the 29 September 2023 response came back. Ms Spence's evidence expands on what she understood from the union representative when they called her on 29 September 2023. Ms Spence says they told her they were about to go on leave for the next week. Ms Spence took the first pen and provided back to the union representative a list of draft clauses for insertion into the settlement document. I accept that she did not include the term that the union representative later inserted which was that the parties agreed to be bound by the agreement irrespective of any mediator sign off. Her oral evidence to me was that she could not find a templated settlement document and was relying on the union representative to have a template to use. I accept as plausible that the list of



clauses penned by Ms Spence were sent to the union representative in these circumstances including some checking back with Ms Naus who made a minor alteration. These clauses mirror ones included in the settlement document that the union representative eventually returned to MKA with Ms Peter's signature. This was after Ms Spence had prompted a response through a text and email<sup>17</sup> to the union representative.

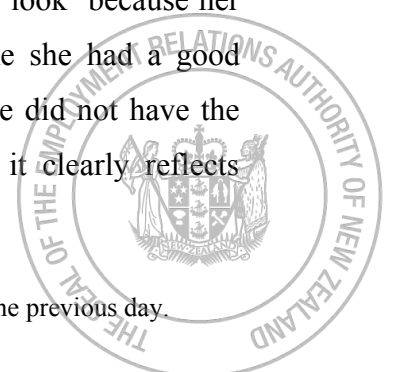
[31] Ms Peter's evidence is that she was rushed by the union representative to sign the settlement document which she understood from them to be pressure coming from MKA. Ms Naus gave evidence that there was a concern that despite the union representative giving a verbal indication of agreement on 29 September 2023, the time was continuing without MKA receiving the expected document back to sign. The concern was that Ms Peters remained off work on pay, a default continuation of the five days of paid discretionary leave previously granted and the investigation process had been paused. I accept there was an issue about organising for Ms Peter's work to be done and the uncertainty of her position impacted this.

[32] I do not interpret the approach by MKA pressuring or 'coercing' Ms Peters to resign and sign the settlement document. I accept the union representative had given an earlier verbal indication nearly three weeks prior on 29 September 2023 that the agreement was accepted subject to it being put in written form for consideration. Ms Spence sought an update and reasonably expressed concern that time was passing without the matter being resolved one way or the other. There was nothing that MKA was made aware of in terms of Ms Peter's communications and questions to the union representative about her not agreeing to the terms.

[33] Ms Peters refers to receiving the settlement document to look at on 13 October 2023. This is consistent with an email from the union representative to her attaching the same. She tells me that she did not really look at it and then had a 'wee look' a few days later. I do not accept Ms Peters evidence that she only took a 'wee look' because her email to the union representative on 10 October 2023 shows me she had a good understanding of points she needed answers to. While I accept she did not have the settlement document provided to her when she sent that email it clearly reflects

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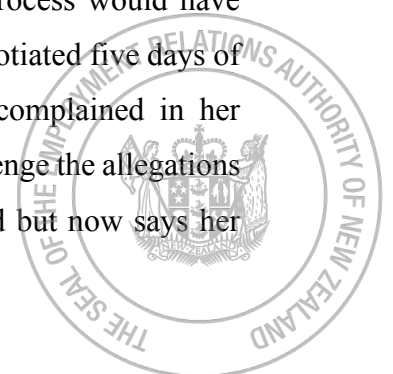
<sup>17</sup> Email Ms Spence to union representative, 17 October 2023 referring to a text the previous day.



knowledge of proposed key terms and a likelihood it came amidst prior discussions with the union representative about what was on the table. Ms Peter's later email to the union representative on 17 October 2023 came after she had the settlement document for five days. It included 'there is a lot of legal jargon I don't understand' and continues to express criticism of the union representative's explanation about a non-taxable lump sum that she still wanted; concerns about the investigation allegations; what would be reported to the teacher's council in the mandatory reporting; and who she did not want to be at the workplace 'when I collect my stuff.' Again, none of this was something MKA could have been aware of and I am not satisfied that Ms Peters took any steps to make them aware. Rather than do this she signed the settlement document on 18 October 2023 and the union representative emailed it to Ms Naus (copied to Ms Spence) the same day saying, 'Please find the ROS as discussed with [Ms Spence]. If you are able to sign this and return to me I will file this with the Mediation Service.' If Ms Peter's felt unreasonably pushed into signing the document by her union representative as is much of her evidence, I am satisfied that MKA knew nothing of this and relied on what was before it as a representation of her agreement to the settlement document and its terms which included in plain language that she agreed to be bound upon signing.

[34] Ms Peter's oral evidence to me when I asked her why she signed if she was so unhappy with the settlement document terms was that she believed she would be without any money to pay her outgoings if she did not sign. This concern is inconsistent with the situation that I find Ms Peters ought to have realised by then which is that she was accepting she would resign in exchange for a monetary benefit. I accept as reasonable MKA's submission that she was well able to have understood the terms written in the settlement document.

[35] There is nothing before me to suggest that had Ms Peters not signed the settlement agreement she would suddenly have been without a job and wages, had she not signed. I accept Ms Naus's evidence that had the matter not settled the investigation would have continued and some arrangements to conclude that process would have occurred including the resolution of Ms Peter's by then expired negotiated five days of paid discretionary leave. I find it inconsistent that Ms Peters complained in her communications to the union representative that she wanted to challenge the allegations in the investigation process on the basis that they were ill founded but now says her



reason for signing the settlement document was because she considered she would not be paid anymore.

[36] That Ms Peters says she could not afford and or access alternative assistance at the time is inconsistent with her having articulated her concerns to the union representative in emails, that she spoke to a friend about the proposed settlement document and then sent the same to her current representative before she signed it (irrespective of what response she received which I understand was for her to go back and talk to the union). Ms Peter's evidence also includes that she was later able to access community law assistance. Ms Peter's evidence that during the time up to when she signed the settlement document she accessed EAP<sup>18</sup> and, as in a brief medical letter more recently obtained, that she was stressed and anxious likely affected her ability to think. I do not find this evidence meets the high threshold for showing a form of incapacity that would somehow void an agreement signed. In any event, MKA had relied on Ms Peters being represented and had no reason to doubt that she had not given full authority for the representative to act on her behalf. While Ms Peters says she complained to the union about the representative, this was in an email on 11 December 2023.

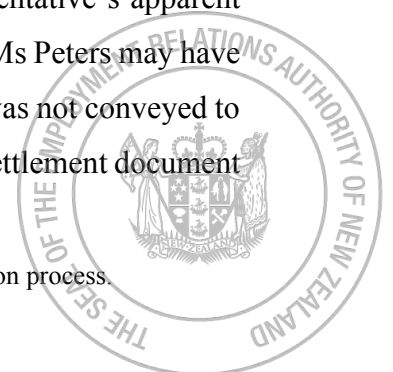
[37] I find an element of disingenuousness in Ms Peters' action of renegeing on an agreement which in terms of the financial terms had largely been performed by the time MKA was aware she had no longer agreed. When the Employment Court<sup>19</sup> considered this similar situation it found the same. I accept the submission for MKA that this case has direct relevance to the present. It supports that it is now unconscionable for Ms Peters to bring her claims.

[38] Accordingly, in summary, I find that Ms Peters is prevented ('estopped') from bringing her claims because she created a belief of expectation by MKA that all matters relating to the employment relationship had settled and that the settlement document was binding upon signing. I find MKA relied on the union representative's apparent authority to have acted on Ms peter's behalf and acted on this. That Ms Peters may have remained unhappy to agree with terms in the settlement document was not conveyed to MKA until well after she had signed the settlement document. The settlement document

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<sup>18</sup> Employee Assistance Programme as offered by MKA as part of the investigation process.

<sup>19</sup> Above at note 11 at [26].

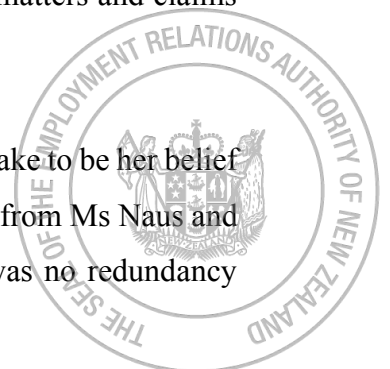


reflected it was a settlement of an employment relationship problem, and I find that ‘accord and satisfaction’ was reached in that MKA was induced to think that by Ms Peters had agreed to be bound including that it was induced by her signing of the settlement document and then acceptance of the salary to December 2023 as was a term of that document. Had Ms Peters not signed I find this performance would not have occurred. In the circumstances I have considered above I find it unconscionable to allow Ms Peters to now renege on her agreement and continue the claims she has lodged.

*Other submissions for Ms Peters*

[39] For the sake of completion, I will consider the other submissions for Ms Peters that I have not already covered above noting as I do that they do not alter my above finding:

- a. While it is submitted that Ms Peters did not have the benefit of a mediator to advise her before signing the settlement document, she had the benefit of her union representative; and
- b. While Ms Peters claims a lack of statutory breaks she does so as part of a grievance of disadvantage. While this could also be dealt with as a matter to be considered as an arrears claim, Ms Peters agreed in the settlement document to settle on the basis of all claims arising out of the employment relationship excluding only enforcement of the settlement document itself (clause 17). Ms Peters also agreed in the settlement document that she had not forgone minimum entitlements (clause 15). I considered whether Ms Naus in replying to broader compliance issues after the settlement document was signed somehow committed to something that survives the settlement document’s terms. I conclude that Ms Peters likely knew about any concern she had about breaks, that she had the opportunity with her representative to have had these matters raised before signing that she agreed to have concluded all matters and claims and had not forgone any minimum entitlements.
- c. While Ms Peters claims that MKA was motivated by what I take to be her belief of an ulterior motive, I do not accept, based on having heard from Ms Naus and Ms Spence, that this is likely. Firstly, I accept that there was no redundancy



proposed for Ms Peter's role at the time she signed the settlement document which included her resignation. It would have made no sense then for her to have received redundancy as seems to be part of what is submitted on her behalf. Secondly, Ms Naus gave plausible straightforward evidence that she had not contemplated a link to Ms Peter's being an expensive redundancy to be avoided as claimed by Ms Peters. Ms Naus said she thought that the eventual outcome of the restructuring may have been attractive to Ms Peters. She also rejected that in the event things had been different and Ms Peter's role in any subsequent restructuring was disestablished there was money to have met obligations to have paid her any entitlement as a result. I find no reason not to accept this plausible, straightforward evidence over what Ms Peters seemed to believe was a dishonest motivation on the part of MKA (Ms Naus in particular) to make her resign.

- d. For similar reasons to the above I also find Ms Peter's position that MKA's motivation was a personal retaliation against her because in April 2023 she had raised issues about her workplace with Ms Naus. Ms Naus's letter in response to that compliant reflects a considered response. I found Ms Peter's evidence that she felt she had a 'target on her back' after making this complaint an unreliable and tenuous link to then saying that the investigation process and then the offer to settle (something I find likely was prompted by her union representative) stemmed from a long planned dishonest motivation to have her leave her employment.

## **Summary**

[40] The outcome of this preliminary matter is that Christine Peters is prevented from continuing her claims in the Authority by the settlement document she signed on 18 October 2023 with Marlborough Free Kindergarten Association which signed on 19 October 2023.

## **Costs**

[41] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.



[42] If the parties are unable to resolve costs, and an Authority determination on costs is needed, MKA may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Ms Peters will then have 14 days to lodge any reply. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[43] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual 'daily tariff' basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>20</sup>



Antoinette Baker  
Member of the Employment Relations Authority

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<sup>20</sup> [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)

