

Appendix

EMPLOYMENT RELATIONS AUTHORITY

STEPS TO BE TAKEN IN PROCEEDINGS

Under the Employment Relations Act 2000, the Authority has been set up as an investigative body whose role is to resolve employment relationship problems by establishing the facts and making a determination according to the substantial merits of the case, without regard to technicalities. (see Section 157 of the Act.)

Set out below is an outline of the steps that parties before the Authority can expect will generally be taken from the time proceedings are commenced until they are determined. Because of different circumstances such as the nature of the case, the parties and constraints of time, there will inevitably be some variation in the procedure from case to case.

The purpose of this note is to give employers and employees, unions, representatives of any parties, members of the public, and anyone having an interest, a broad outline of how the Authority will conduct investigation meetings and what will usually happen at various stages until any proceedings are determined. Periodic reassessment of the procedures below will be carried out by the Authority, particularly after the first cases have been completed.

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1. Proceedings are commenced in accordance with the requirements of the Employment Relations Authority Regulations 2000. A case is begun by lodging a statement of problem (or statement of matter). A response is given through a statement in reply. The forms are available from the Auckland, Wellington or Christchurch offices of the Authority and from the e-Lab web site.
 2. Authority Support Officers will check to see that the wording and contents of the statement of problem and statement in reply are such as to fully, fairly and clearly inform all parties and the Authority. If not, either by telephone or other convenient method, a Support Officer will seek clarification or any necessary additional information from the author of the statement.
 3. Once an Authority member has considered the information provided by the parties in their statements a preliminary conference will in most cases be held with them or their representatives, if any. This will be either by telephone, in person, or other convenient means of communication. The purposes of a conference include;
 - a. Identification of factual and/or legal issues central to the employment relationship problem and its determination, and disposal by agreement of non-contentious matters;
 - b. Settling with the parties particular details as to the conduct of the investigation meeting, such as persons who are to give information and the supply of documentary information;

- c. Consideration of directions to be issued, either at the request of any party or by the Authority of its own initiative;
 - d. Setting a timetable for necessary steps to be taken by the parties or anyone required to attend before the Authority;
 - e. Fixing the date, place and time for a meeting to start the investigation (to be confirmed by written notice).
4. Investigation meetings will commence with a general outline given by the Authority of the procedure to be followed in the particular case, including the order in which witnesses are to give evidence. A formal opening is not required from parties. Information will usually be provided to or obtained by the Authority in the form of sworn or affirmed evidence. Depending on any directions previously given, a witness may read a prepared statement or give oral evidence. This evidence may be added to at the request of the party or the party's representative. Following this the Authority will question the witness. There will not be cross-examination by opposite parties or their representatives, although they may be invited to propose additional matters for the Authority to inquire into in relation to the evidence or anything else of relevance to the investigation. The Authority will consider any such proposals and make such inquiries it thinks necessary.
5. At the end of an investigation meeting parties or their representatives may sum-up by making points about the information gathered by the Authority and may refer to any applicable legal principles. A citation of any case law should be given where a copy of the decision is not being provided.
6. The determination of the Authority in any case will be in writing, to be issued either in a reserved decision or as a transcript of an oral decision given at the end of the investigation meeting. The Authority will aim to issue reserved decisions as soon as possible after the meeting but in any case within 6 weeks of completion of the investigation.
7. At any time while any case is before the Authority for determination, the parties may be directed to undertake mediation or further mediation (see Section 159 of Act). Such direction will be given in writing and will include details of the date, place and time of the mediation, and whether the mediator is to come from the Mediation Service of the Department of Labour.
8. The public may attend any investigation meeting unless excluded by order of the Authority.

A. Dumbleton
Chief of Employment Relations Authority

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