

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2023] NZEmpC 88  
EMPC 40/2023  
EMPC 82/2023**

IN THE MATTER OF	challenges to determinations of the Employment Relations Authority
BETWEEN	CARRINGTON RESORT JADE LP Plaintiff
AND	STACEY ROY Defendant

Hearing: On the papers

Appearances: W Tan, agent for plaintiff  
L Anderson, advocate for defendant

Judgment: 16 June 2023

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**INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE J C HOLDEN  
(Good Faith Report)**

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[1] Carrington Resort Jade LP (Carrington) challenges de novo a substantive and a costs determination of the Employment Relations Authority (the Authority). The Authority found that Carrington had unjustifiably suspended and unjustifiably dismissed Ms Roy, and that Carrington had made an unlawful deduction from Ms Roy's final pay, and owed her wage arrears.<sup>1</sup> Ms Roy also was awarded costs.<sup>2</sup>

[2] In its substantive determination, the Authority recorded in some detail the procedure that preceded the investigation meeting, noting numerous occasions where

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<sup>1</sup> *Roy v Carrington Resort Jade LP* [2023] NZERA 4 (Member Larmer) [*Substantive*].

<sup>2</sup> *Roy v Carrington Resort Jade LP* [2023] NZERA 51 [*Costs*].

it says Carrington and Mr Tan, its agent, failed to meet timetabling obligations, either as prescribed in legislation or as set out by the Authority.<sup>3</sup> Carrington failed to attend the investigation meeting on 5 October 2022. It also did not file submissions after the conclusion of the investigation meeting, despite being invited to do so.

[3] As a result of those findings, the Court sought a report from the Authority under s 181 of the Employment Relations Act 2000 (the Act) giving the Authority's assessment of the extent to which Carrington facilitated, rather than obstructed, the Authority investigation and whether Carrington acted in good faith towards Ms Roy during the investigation.<sup>4</sup> The purpose of obtaining a Good Faith Report is so that the Court can consider possible directions limiting the nature and extent of the hearing of the challenge.<sup>5</sup>

[4] This process aligns with one of the underlying objects of the Act, being to build productive employment relationships, including by promoting good faith behaviour.<sup>6</sup> Sections 181 and 182(2) provide a means to sanction parties who fail to properly take part in statutory mediation and investigation processes. The discretion conferred on the Court by s 182, however, must be exercised judicially and consistently with the interests of justice. This involves consideration not only with the blameworthy conduct of the party involved but also the overall interests of both parties.<sup>7</sup>

[5] As required by s 181(3) of the Act, the Authority provided the parties with a copy of its report in draft for comment before submitting its final report to the Court.

[6] Ms Roy, through her advocate Mr Anderson, provided feedback on the draft report, including with respect to four additional paragraphs that the Authority Member added to the draft report after it was initially sent to the parties.

[7] The Authority Member reports that Carrington did not provide feedback on the draft report. The Authority Member has attached copies of the read receipts from

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<sup>3</sup> *Roy*, above n 1, at [37]-[74].

<sup>4</sup> Employment Relations Act 2000, s 181(1).

<sup>5</sup> Employment Relations Act 2000, s 182(3).

<sup>6</sup> Employment Relations Act 2000, s 3(a)(i).

<sup>7</sup> *The Travel Practice Ltd v Owles* EmpC Christchurch CC15/09, 14 October 2009 at [20].

Carrington for the emails an officer of the Authority sent attaching the draft report, and the additional paragraphs. The Good Faith Report of the Authority, therefore, was completed without any input from Carrington.

[8] On receipt of the Good Faith Report by the Court, the parties were invited to file and serve any submissions on it, including on any directions they considered the Court should make on the nature and extent of the hearing of the challenge.

[9] Ms Roy provided submissions on those matters; Carrington did not.

### **Good faith report details numerous incidents of concern**

[10] The Authority notes that Carrington engaged with the Authority in that it:

- (a) filed a statement in reply;
- (b) attended a case management conference;
- (c) provided some, minimal, documents to the Authority;
- (d) filed some witness statements; and
- (e) filed costs submissions.

[11] The instances in which the Authority considered Carrington obstructed the Authority's investigation by its actions or inactions are, however, much more extensive. They include:

- (a) failing to file documents, including the statement in reply, within the required timeframe;
- (b) failing to be responsive to the Authority's inquiries by phone calls, voicemails and emails;
- (c) failing to provide information about Carrington's availability to attend a case management conference;

- (d) failing to provide all documents sought by the Authority (including wage and time records, holiday and leave records, payslips and personnel records), and video CCTV footage referred to by Carrington; and
- (e) failing to attend the investigation meeting on 5 October 2022.

[12] The Authority also notes the conduct of Mr Tan towards Ms Roy, disparaging her and other employees. There is reference to allegations that Mr Tan also disparaged Mr Anderson.

[13] Accordingly, the Authority found that, in multiple ways, and on numerous occasions, Carrington failed to facilitate the Authority's investigation and was obstructive of it.

[14] Its assessment is that Carrington also failed to act in good faith towards Ms Roy during the Authority's investigation.

[15] Having reviewed the Good Faith Report and the substantive determination of the Authority, the Court agrees with the Authority's view of Carrington's conduct.

[16] In particular, it is clear that Carrington:

- (a) has taken an obstructive approach and continues to fail to properly explain that approach;
- (b) did not participate in the Authority's investigation in a manner designed to resolve the issues involved; and
- (c) has been disrespectful, contemptuous or unhelpful in correspondence to or about the other party.

[17] The Court now needs to determine what, if any, directions it should make as to the nature and extent of the hearing, bearing in mind the issues raised.<sup>8</sup>

[18] Ms Roy's suggestion as to the appropriate directions on the nature and extent of the hearing is that the hearing be limited to the one substantive personal grievance, being with respect to the finding of unjustified dismissal, and any remedies on that issue.

[19] I consider that such a direction would be fair in the circumstances; the main finding of unjustifiable dismissal would remain able to be challenged, but Ms Roy would not be put to the cost of defending the Authority's findings with respect to the suspension, the deduction and wage arrears. Such a direction also reflects that Carrington failed to supply the time and wage records and other material sought by the Authority.

[20] Accordingly, the case will proceed on a non-de novo basis in relation to the finding that Carrington unjustifiably constructively dismissed Ms Roy from her employment on 30 April 2022.<sup>9</sup> The remedies for Ms Roy's unjustifiable dismissal will also be in contest should the challenge to the finding of unjustifiable dismissal be unsuccessful.<sup>10</sup> In that regard, I note the point made by Mr Anderson, for Ms Roy, that the distress compensation of \$24,000 was to compensate Ms Roy in respect of both the finding of unjustifiable disadvantage (the suspension) and of unjustifiable dismissal.<sup>11</sup>

[21] To progress this matter, the following orders are now made:

- (a) Carrington is to file and serve its briefs of evidence in respect of the challenge to the finding of unjustifiable dismissal by 4 pm on Friday 14 July 2023. Ms Roy is to file and serve her briefs of evidence in respect of that issue by 4 pm on Friday 11 August 2023.

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<sup>8</sup> Employment Relations Act 2000, s 182(3).

<sup>9</sup> *Roy*, above n 1, at [185(e)].

<sup>10</sup> At [185(f)].

<sup>11</sup> At [151].

- (b) Any evidence in reply from Carrington is to be filed and served by 4 pm on Friday 18 August 2023.
- (c) There then will be a further directions conference to progress the matter towards a hearing.

**Ms Roy is entitled to costs**

[22] Ms Roy has incurred costs in relation to the good faith report issues. She is entitled to an award for those costs. Absent agreement between the parties, she is invited to apply to the Court by memorandum filed and served within 20 working days of the date of this judgment. Any memorandum in response from Carrington is to be filed and served within a further 15 working days, with Ms Roy entitled to file and serve a memorandum in reply within a further five working days. Costs on this matter then will be determined on the papers.

J C Holden  
Judge

Judgment signed at 10 am on 16 June 2023