



Employment Court of New Zealand

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Adventure Playground Rotorua Limited v Isaac [2020] NZEmpC 7 (18 February 2020)

Last Updated: 20 February 2020

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2020\] NZEmpC 7](#)

EMPC 238/2019

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	ADVENTURE PLAYGROUND ROTORUA LIMITED Plaintiff
AND	SHAUN ISAAC Defendant

Hearing: On the papers

Appearances: K J Patterson, counsel for
plaintiff F Wood, counsel for
defendant

Judgment: 18 February 2020

INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN

(Good Faith Report)

[1] This interlocutory judgment concerns the effect on these proceedings of the Good Faith Report provided by the Employment Relations Authority (the Authority) about the way Adventure Playground Rotorua Ltd (Adventure Playground), the plaintiff in these proceedings, participated in the Authority's investigation.

[2] Adventure Playground has filed a de novo challenge to a substantive determination of the Employment Relations Authority (the Authority).¹ The determination found the defendant, Mr Isaac, was entitled to wages and holiday pay from Adventure Playground. The Authority also rejected Adventure Playground's

¹ *Isaac v Adventure Playground Rotorua Ltd* [\[2019\] NZERA 377](#).

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counter-claim in respect of alleged damage to company property and a shortfall in Adventure Playground's accounts.

[3] In the Court proceedings, Adventure Playground has filed applications to stay this proceeding and also the related proceeding that dealt with quantum, costs and penalties.² In effect, it seeks to stay enforcement of the monetary awards of the Authority. Mr Isaac has applied for security for costs. Those applications are to be heard by the Court on 12 March 2020.

[4] Mr Isaac requested the Court obtain a Good Faith Report from the Authority, and Adventure Playground had no objection to that course. The Court requested a Good Faith Report from the Authority.

[5] Because Mr Crichton, the former Chief of the Authority who carried out the investigation and issued the determination, has left the Authority, the report was prepared by Member Fitzgibbon. She records that she consulted with Mr Crichton and

also with Member Larmer, who first handled the matter in the Authority.

[6] Before finalising its report, the Authority provided a draft to the parties for their comment. Mr Isaac supported the Authority's preliminary assessment that Adventure Playground did not constructively assist in resolving the employment relationship problem in a timely, economic and efficient manner. Adventure Playground did not accept the Authority's proposed findings and provided substantive comment.

[7] The Authority has finalised its report and provided it to the Court. It also provided the comments from the parties. Member Fitzgibbon confirmed her preliminary view and said that, as a result, Mr Isaac's resources and those of the Authority were wasted.

[8] The principal finding related to Adventure Playground not filing witness statements before the date first set for the Authority's investigation. This led to the investigation meeting being adjourned to a new date.

2 *Isaac v Adventure Playground Rotorua Limited* [2019] NZERA 488.

[9] The parties were invited to provide further comment to the Court on the Good Faith Report as submitted by the Authority, but they advised that they relied on their previous comments to the Authority.

There is a discretion to limit a challenge where there is a failure to participate in good faith

[10] Section 182 deals with the effect of a Good Faith Report. Section 182(2) allows the Court to make a direction that the hearing of a challenge is to be other than de novo but only if it is satisfied that the person challenging the determination did not participate in the Authority's investigation of the matter in a manner that was designed to resolve the issues involved. As discussed by Judge Couch in *The Travel Practice Ltd v Owles*:³

[20] The purpose of s181 and s182(2) is to provide a means to sanction parties who fail to properly take part in the statutory mediation and investigation processes. The discretion conferred on the Court by s182(2), however, must be exercised judicially and consistent with the interests of justice. This involves consideration not only of the blameworthy conduct of the plaintiff but also the overall interests of both the plaintiff and the defendant.

Adventure Playground did engage with process, albeit belatedly

[11] In the memorandum filed by counsel for Adventure Playground, it acknowledges it failed to provide its witness statements before the first date set for the investigation meeting. However, this is not a case where the plaintiff wholly failed to engage with the process.⁴ Adventure Playground advises that it attended mediation. It attended the Authority meetings, both on the first date allocated, at which the meeting was adjourned, and on the second date in March 2019 when the substance of the matter was investigated.

[12] In the Authority's determination, costs of \$3,250 were awarded to Mr Isaac for the aborted first investigation meeting.⁵ Any failure by Adventure Playground to comply with any Court timetabling may sound in costs in the Court.

3 *The Travel Practice Ltd v Owles* EmpC Christchurch CC15/09, 14 October 2009.

4 Compare *Rawlings v Sanco NZ Ltd (No 1)* [2006] NZEmpC 8; [2006] ERNZ 29 (EmpC).

5 *Isaac*, above n 1, at [130].

[13] In the circumstances, and taking into account the issues raised, I do not consider the ambit of the challenge or the evidence allowed should be limited. The matter will proceed on a de novo basis in the usual way.

[14] There is no order as to costs.

J C Holden Judge

Judgment signed at 3.45 pm on 18 February 2020