



# New Zealand Employment Relations Authority Decisions

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## **Alo v Emerge Aotearoa Limited (Wellington) [2017] NZERA 2067; [2017] NZERA Wellington 67 (3 August 2017)**

Last Updated: 11 August 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2017] NZERA Wellington 67  
3013394

BETWEEN POLYANNA ALO, HUIA BROUGHTON, ALEX LOLOA, ANGELA RUBADUCA and NGAIRE SHORTLAND

First Applicants

AND EMERGE AOTEAROA LIMITED First Respondent

BETWEEN FEMKE DE FEIJTER Second Applicants

AND HEALTHCARE OF NEW ZEALAND LIMITED

Second Respondent

BETWEEN SHENNAH JARDINE and WENDY MURPHY

Third Applicants

AND MASH TRUST Third Respondent

BETWEEN JULIE WELLINGTON and JACLYN WIREMU

Fourth Applicant

AND ODYSSEY HOUSE TRUST Fourth Respondent

BETWEEN KAREN BROUGH, VERITY BROWN and

TARN EVANS Fifth Applicant

AND PATHWAYS HEALTH LIMITED Fifth Respondent

BETWEEN VICKI HARMAN Sixth Applicant

AND PUKEKO BLUE LIMITED Sixth Respondent

BETWEEN NELLIE KATIPA Seventh Applicant

AND TE AWHI WHANAU CHARITABLE TRUST

Seventh Respondent

BETWEEN KIM BALDWIN Eighth Applicant

AND WALSH TRUST Eighth Respondent

Member of Authority: T G Tetitaha

Representatives: P Cranney/C McNamara, Counsel for Applicants

P Shaw, Counsel for First Respondent

E Warden, Counsel for Second Respondent

A Hall, Counsel for Third Respondent

B Smith, Counsel for Fourth Respondent

A Shadbolt/A Twaddle, Counsel for Fifth Respondent

T McGinn, Counsel for Sixth Respondent

E Anderson, Counsel for Seventh Respondent

A Wheel, Counsel for Eighth Respondent

L Sijbrant, Counsel for Platform Trust

Investigation Meeting: On the papers

Submissions Received: 20, 26 and 31 July 2017 from applicants

24, 28 and 31 July 2017 from respondents

Date of Determination: 3 August 2017

#### **DETERMINATION OF THE AUTHORITY**

**A. The application to strike out the sixth named parties is dismissed. Costs are reserved.**

#### **Employment Relationship Problem**

[1] The applicants are employed in the Mental Health Addiction Treatment sector. They have applied under the [Equal Pay Act 1972](#) for a determination about the remuneration of applicant female employees of the named respondents. This determination deals with an application to remove the sixth named applicant and respondent. There are four other applications about jurisdiction, stay, removal to the Employment Court and urgency which are dealt with in a separate Minute.

#### **Application to strike out sixth named parties**

[2] Counsel for the sixth respondent has advised the sixth applicant's position has changed and she no longer has an interest in these proceedings:<sup>1</sup>

The sixth applicant who is employed by the sixth respondent, was at the time the problem was filed employed in providing mental health and addiction treatment services as pleaded in paragraph 2.1 of the amended statement of problem however the sixth applicant moved on 1

July 2017 to another role (still employed by the sixth respondent) performing services covered by the Care and Support Workers (pay Equity) Settlement Agreement. Accordingly the sixth applicant no longer has an interest in the proceeding. On that basis both the sixth applicant and sixth respondent should be removed from the proceeding.

[3] I directed the parties to file any submissions about the striking out the sixth named parties by 28 July 2017 3 pm. All parties have now filed submissions as directed. None of other parties have taken issue about the removal of the sixth named parties. No one has sought to be heard on the matter.

#### **Law**

[4] The power to strike out a party to a proceeding is set out in s221 of the Employment Relations Act 2000:

#### **221 Joinder, waiver, and extension of time**

In order to enable the Court or the Authority, as the case may be, to more effectually dispose of

any matter before it according to the substantial merits and equities of the case, it may, at any stage of the proceedings, of its own motion or on the application of any of the parties, and upon such terms as it thinks fit, by order,—

(a) direct parties to be joined or struck out ...

[5] The general test is whether the proposed party will be directly affected by any order that may be made in the proceedings, and the general rule is that it is for the plaintiff to decide who he or she will sue and for any person named as a defendant to take strike-out proceedings if they consider there is no arguable cause of action.<sup>2</sup>

### **Issue for hearing**

[6] The issue for substantive hearing before the Authority is whether the Care and Support Workers (pay equity) settlement agreement effective 1 July 2017 (CSW settlement agreement) may be taken into account in determining what is equal pay required for female employees in the Mental Health and Addiction Treatment Services sector.

### **Sixth Named Parties**

[7] It is accepted Ms Harmon is now performing services covered by the CSW settlement agreement. As such there is no order to be made in this proceeding that shall affect her.

[8] The applicants have now sought an adjournment to file an amended pleading removing Ms Harmon and replacing her with Donna-Marie Davies. It is assumed Ms Davies is employed by the sixth respondent and is remunerated on the same basis as the other applicants. No draft amended pleading has as yet been filed.

[9] The sixth respondent has been put to the expense of seeking to have itself struck out which would have occurred except for the advice from the applicants about a replacement sixth applicant.

[10] Unfortunately for the sixth respondent, if it employs a sixth applicant with standing to bring these proceedings against it, it is just to allow a further adjournment for that amended pleading to be filed. Any injustice to the sixth respondent can be met by an order for costs. I shall be timetabling the filing of the amended pleading in a separate minute.

[11] The application to strike out the sixth named parties is dismissed. Costs are reserved.

### **TG Tetitaha**

### **Member of the Employment Relations Authority**

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