

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 534  
5387944

BETWEEN BENJAMIN JOHN AUSTIN  
Applicant  
AND YOOBEE LIMITED  
Respondent

Member of Authority: T G Tetitaha  
Representatives: Applicant in person  
TL Clark/EJ Coats, Counsel for Respondent  
Investigation Meeting: On the papers  
Submissions Received: 11 October and 18 November 2013 from Applicant  
7 November 2013 from Respondent  
Date of Determination: 20 November 2013

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**INTERIM DETERMINATION OF THE AUTHORITY**

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- A. The application to reopen the investigation and stay of the orders set out in the previous interim determination dated 8 November 2013 is declined.**
- B. The interim determination dated 8 November 2013 is to be issued.**
- C. Costs are reserved.**

**Employment Relationship Problem**

[1] Following the release to the parties of a determination of the Authority as to admissibility of evidence on 8 November 2013, Benjamin Austin raised concerns he wished to file further submissions. Submissions had been received from both parties prior to 8 November and the matter referred to an Authority member for determination.

- [2] Mr Austin’s further submissions received on 18 November 2013 have been treated as an application for re-opening of this part of the investigation and stay of the orders in the interim determination dated 8 November 2013 pursuant to clause 4 Schedule 2 Employment Relations Act 2000.
- [3] The test for re-opening investigations is the interests of justice, having regard to the likelihood of a miscarriage of justice balanced against other relevant factors such as the importance of finality in litigation.<sup>1</sup>
- [4] This case does not meet that test. Mr Austin’s submissions received on 18 November 2013 gave greater detail, but essentially reiterate his previous submission. He alleges there was no dispute or statement about the 22 May discussion being “off the record”. YOOBEE disagrees.
- [5] The Authority has already considered and determined these issues in the interim determination dated 8 November 2013. There is no miscarriage of justice requiring re-opening of this part of the investigation. It is important given this matter is for substantive hearing in December 2013 to finalise this issue. Mr Austin is able to take this matter up on appeal after his substantive hearing in December, if he wishes to pursue it further.
- [6] The application to reopen the investigation and stay of the orders set out in the previous interim determination dated 8 November 2013 is declined. The interim determination dated 8 November 2013 is to be issued. Costs are reserved.

**T G Tetitaha**  
**Member of the Employment Relations Authority**

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<sup>1</sup> *Young v Board of Trustees of Aorere College* [2013] NZEmpC 111 citing *Shore v Aqua-Cool Ltd* AC 73/05, 5 December 2005 at [22] and *Ports of Auckland Limited v NZ Waterfront Workers Union*[1994] 1 ERNZ 604, 607