

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2014] NZERA Wellington 27
5425420

BETWEEN GRAEME BIRD
 Applicant

AND SAI SYSTEMS LIMITED
 Respondent

Member of Authority: Trish MacKinnon

Representatives: Tanya Kennedy, Counsel for the Applicant
 Barbara Buckett, Counsel for the Respondent

Investigation Meeting: 24 March 2014

Determination: 24 March 2014

ORAL DETERMINATION OF THE AUTHORITY

Intervening Matter

[1] Sai Systems Limited (SSL) has applied to the Authority to join Seyclean Schools (Seyclean) as second respondent in this matter. Mr Bird opposes the application.

Background

[2] A one day investigation meeting was held on 6 March 2014 into Mr Bird's claims against SSL. The meeting was adjourned shortly after 5 p.m. when it became clear there was insufficient time to hear evidence from all witnesses and commitments of counsel prevented its continuation into the evening. Arrangements were then made to reconvene the investigation meeting on 24 March 2014. Following this an application for the joinder of Seyclean was made on 14 March 2014.

Jurisdiction

[3] The Authority has jurisdiction under s.221 of the Employment Relations Act 2000 (the Act) to direct parties to be joined at any stage of the proceedings, either of its own volition or on the application of any of the parties. Its discretion is for the purpose of enabling the matter to be more effectually disposed of “*according to the substantial merits and equities of the case*”.

Issue

[4] The question for the Authority to determine is whether that discretion should be exercised in this instance.

Decision

[5] Having listened closely to the submissions, I am not persuaded that Seyclean should be joined as a party. Had I been persuaded, I would not have proceeded with this oral determination. I would instead have adjourned the meeting to allow Seyclean the opportunity to respond to the application.

[6] The reasons for not joining Seyclean are as follows:

- i. The general rule is “*that it is for the plaintiff to decide who he or she will sue ...*”¹. Mr Bird has not requested, and nor has he agreed to, his former employer, Seyclean, being joined to the matter he has asked the Authority to determine;
- ii. Lack of jurisdiction to award the type of relief sought. SSL seeks relief against Seyclean for any failure the Authority may find against it to comply with Part 6A of the Act. It asserts that Seyclean is “*liable to indemnify Sai Systems for any loss/damage arising from its omissions and failures to comply with its responsibilities in connection with any transfer*”.

I find such relief is not within my jurisdiction to award. If I found for Mr Bird under Part 6A, SSL would not be absolved from any liability because of actions or omissions of Seyclean. If I were satisfied the situation warranted it, I could impose a penalty on Seyclean under s.69G(4) of the Act. That would only occur if I found Seyclean had

¹ *Auckland Regional Services v Lark* [1994] 2 ERNZ 135 at 138

breached its obligations under s.69G of the Act. Any such penalty would be payable to the Crown not to SSL.

Determination

[7] For the above reasons I decline to join Seyclean Schools as a respondent in the matter before the Authority.

Costs

[8] The issue of costs is reserved and will be determined at the time of the substantive determination.

Trish MacKinnon
Member of the Employment Relations Authority