



Employment Court of New Zealand

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Caterers on the Run Limited v Pillay [2017] NZEmpC 73 (9 June 2017)

Last Updated: 14 June 2017

IN THE EMPLOYMENT COURT AUCKLAND

[\[2017\] NZEmpC 73](#)

EMPC 45/2017

IN THE MATTER OF a challenge to a determination of
the
Employment Relations Authority

BETWEEN CATERERS ON THE RUN LIMITED
Plaintiff

AND YADESHWAR PILLAY Defendant

Hearing: On the papers being a Statement of Claim filed 2 March
2017
and minutes of the Court dated 10 March 2017 and 17
May
2017

Judgment: 9 June 2017

JUDGMENT OF JUDGE M E PERKINS

Introduction

[1] This is a matter in which the plaintiff has challenged a determination of the Employment Relations Authority dated 3 February 2017.¹ The statement of claim, which has been filed by the plaintiff, raises a non-de novo challenge. However, in setting out the parts of the determination to which the challenge relates, all of the findings of the Authority are referred to, and on that basis it is clearly a de novo challenge.

[2] The statement of claim which has been filed is clearly defective as it does not comply with Regulation 11 of the [Employment Court Regulations 2000](#) (the Regulations). As a result of that the matter was referred by the Court registry staff to Judge Inglis, who issued a minute dated 10 March 2017. In that minute it was

pointed out to the plaintiff that the statement of claim did not comply with the

¹ *Pillay v Caterers on the Run Ltd* [2017] NZERA Auckland 32.

CATERERS ON THE RUN LIMITED v YADESHWAR PILLAY NZEmpC AUCKLAND [\[2017\] NZEmpC 73](#) [9 June 2017]

Regulations. The plaintiff, being unrepresented, was granted leave to file an Amended Statement of Claim which complied with the Regulations. The time limit set for the filing of that Amended Statement of Claim was 4 pm on 31 March 2017. Judge Inglis indicated that in the meantime there was no requirement for the defendant, who was unrepresented at the Authority, to plead to the then current Statement of Claim.

[3] In her minute Judge Inglis set out Regulation 11 of the Regulations in its entirety, and also indicated to the plaintiff that it would be desirable for it to have the assistance of legal representation. As an alternative the plaintiff was notified that the Court and the Auckland District Law Society operate a pro-bono pleadings assistance scheme which might help the plaintiff in preparing a Statement of Claim which complied with reg 11.

[4] Despite the directions and assistance given by Judge Inglis in her minute, the plaintiff did not file an Amended Statement of Claim

within the time allowed. A directions conference by telephone was then convened for 17 May 2017. Mr J Valentine, a director of the plaintiff (who is representing the plaintiff in these proceedings), was able to be contacted and attended the conference by telephone link up. Mr Pillay, the defendant, could not be contacted in advance and accordingly did not attend the telephone conference. The purpose of the conference was in any event, to ascertain from Mr Valentine whether the plaintiff still wished to proceed with the challenge, and if so, how he was progressing with the filing of an Amended Statement of Claim even though the time had long since expired for him to do so. At the conference, Mr Valentine indicated that the plaintiff did wish to proceed with the challenge. He maintained that he had difficulty in getting legal advice, but that he had now made contact with a lawyer and that he would be able to file the Amended Statement of Claim.

[5] It was indicated to Mr Valentine at the conference and confirmed in a subsequent minute issued the same day that the matter would not be allowed to go on indefinitely but that a further period of 14 days would be allowed to file the pleadings. This would expire at 4 pm on 31 May 2017. An indication was given that

if this further timetabling was not complied with, the file would be referred back to a

Judge for the purposes of striking the proceedings out. Costs were reserved.

[6] The plaintiff has still not filed an Amended Statement of Claim. Of course the further time limit for doing so has expired. Accordingly, it is clear that the plaintiff does not intend to proceed with the challenge and the proceedings are struck out.

[7] As neither party is represented by legal counsel in these proceedings, no issue as to costs arises.

[8] As indicated in the minute issued following the directions conference on

17 May 2017, no stay of enforcement of the Authority's monetary awards has been made and each party remains entitled to take enforcement proceedings in respect of those awards.

M E Perkins

Judge

Judgment signed at 11.30 am on 9 June 2017

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