



# Employment Court of New Zealand

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## Chevelle Motors Limited v Cranswick [2017] NZEmpC 108 (29 August 2017)

Last Updated: 2 September 2017

### IN THE EMPLOYMENT COURT AUCKLAND

#### [\[2017\] NZEmpC 108](#)

EMPC 43/2017

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

BETWEEN CHEVELLE MOTORS LIMITED  
Plaintiff

AND TRINA CRANSWICK Defendant

Appearances: K Johnstone, agent for plaintiff  
R Tretheway, counsel for  
defendant

Judgment: 29 August 2017

### JUDGMENT OF JUDGE M E PERKINS

[1] This matter involves a challenge to a determination of the Employment Relations Authority. An oral determination was issued by the Authority on 31 January 2017 and confirmed in a written record dated 1 February 2017.<sup>1</sup>

[2] The challenge is defended.

[3] It is noted for the purposes of this judgment that at the Authority's investigation meeting on 31 January 2017 (held at Gisborne), the respondent (the plaintiff in the Court proceedings) made no appearance.

[4] A hearing was allocated for the challenge. The hearing was to be held in Gisborne on 25 and 26 July 2017 at the court premises of the Gisborne Maori Land Court which had been made especially available for this hearing.

<sup>1</sup> *Cranswick v Chevelle Motors Ltd* [2017] NZERA Auckland 26.

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[5] In preparation for the hearing, Judge Inglis in a minute dated 12 June 2017 issued timetabling directions. In view of the fact that the defendant's case was to be presented first, the defendant was to prepare a common bundle of documents with the cooperation of the plaintiff. The defendant's briefs of evidence were to be filed no later than 20 working days prior to the first day of the hearing. The bundle of documents was also to be prepared and filed at that time. The plaintiff's briefs of evidence were to be filed and served no later than 10 working days prior to the first day of the hearing. If any extensive or surprising evidence in reply was to be given, then this was to be filed and served no later than three working days prior to the hearing.

[6] In accordance with the directions given by Judge Inglis, the defendant filed a brief of evidence. She could not procure the co-operation of Mr Kevin Johnstone, who was representing the plaintiff, in the preparation of a common bundle of documents. Accordingly, the defendant simply filed her own bundle of documents.

[7] The defendant's brief of evidence and the common bundle were not filed on the date specified in the directions. However, the brief and the bundle were filed a short time thereafter. The plaintiff's briefs were then due to be filed on 11 July 2017. These briefs were never filed, although in somewhat curious circumstances, the Court received a bundle of documents via the District Court at Gisborne, which Mr Johnstone later confirmed to the Court registry was intended to be the evidence for the plaintiff. An attempt to file evidence on behalf of the plaintiff in that form was not acceptable, as briefs were required. Mr Johnstone, who apparently presently resides in Australia, was informed of that fact.

[8] On 12 July 2017, the Court registry received a notice of change of representation for the plaintiff. A new address for service was also given for the plaintiff. The document, however, was incomplete, and the attempt to give notice of representation in that form simply did not conform to the Court Rules and was unacceptable.

[9] On 12 July 2017, the Court registry also received an email from a person purporting to be "handling all the correspondence" while Mr Johnstone was in

Australia. That email stated that an endeavour was to be made to have the plaintiff's briefs of evidence filed by the end of that week once contact was made with Mr Johnstone in Australia so as to ascertain who the witnesses would be.

[10] Some leniency in extending time to the parties, particularly where they are representing themselves, may be reasonable, but not in these circumstances where at this late stage, Mr Johnstone who was representing the plaintiff, still appeared unclear as to the identity of the witnesses he intended calling.

[11] As a result of these developments, the representative for the defendant expressed concern about the delay. The defendant indicated that she would be considerably prejudiced by having insufficient time to consider any evidence from the plaintiff in whatever form that was to be. This, in turn, substantially prejudiced the defendant and her representative in preparation for the hearing.

[12] In a minute dated 12 July 2017, I indicated that the circumstances as they then stood were totally unsatisfactory. The fixture was allocated in Gisborne, a city remote from Auckland. The court would go to considerable expense in having a Judge and court staff travel to Gisborne for the purposes of the hearing. At that stage, it was uncertain whether evidence was going to be presented on the plaintiff's behalf or even whether there would be a representative of the plaintiff at the hearing. This is, after all, a challenge by the plaintiff. Greater cooperation from the plaintiff's representative would have been expected, including prompt compliance with the timetabling directions.

[13] In view of what had transpired and the grave risk that the hearing of the matter would not be able to proceed, the fixture was vacated. As indicated in the Court's minute of 12 July 2017, no order had been made for stay of enforcement of the Authority's determination which favoured the defendant, and accordingly, the defendant was free to take steps to enforce the determination.

[14] When the fixture was vacated, I gave an indication that it would be reviewed by a Judge in four weeks time. I indicated that if the plaintiff intended to proceed with the challenge, then a memorandum from its representative would be required

within that time, setting out proposals as to how the matter might be progressed and timetabling for achieving that purpose. Costs were reserved.

[15] The registry was able to confirm that the minute of 12 July 2017 was received by the plaintiff because a read receipt email was sent by the agent of the plaintiff to the Court, advising that the minute was read on 13 July 2017.

[16] Since that minute, the plaintiff has taken no further steps. It now seems clear that the plaintiff does not intend to proceed with the challenge. Accordingly, the challenge is dismissed for want of prosecution.

[17] Costs are reserved, although costs will follow the event. If Ms Cranswick wishes to apply for an order of costs, then she should file a memorandum accordingly within 14 days. She or her counsel should endeavour to arrange service of such memorandum on Mr Johnstone. The Court will endeavour to deliver a copy of this judgment to Mr Johnstone. If Mr Johnstone wishes to be heard on the matter of costs, then he would also need to file a memorandum within the 14 day period. At the expiry of that period, the Court will give a further judgment on costs if those are sought.

M E Perkins

Judge

Judgment signed at 4 pm on 29 August 2017