

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 248
3011011

BETWEEN AARON JOHN DEMPSEY
 Applicant

A N D CARDY BUSINESS LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Applicant in person
 Mark Donovan, Counsel for Respondent

Investigation Meeting: Determined on the papers

Submissions Received: None from Applicant
 9 August 2017 from Respondent

Date of Determination: 23 August 2017

**DETERMINATION OF A PRELIMINARY MATTER BY THE
EMPLOYMENT RELATIONS AUTHORITY**

Statement of Problem

[1] On 21 May 2017, the applicant, Mr Aaron Dempsey, filed a statement of problem in the Authority alleging that he had been employed by the respondent, Cardy Business Limited (“Cardy”) and was not a contractor. Mr Dempsey sought orders from the Authority that he was an employee, payment of wages, KiwiSaver contributions, the sum of \$8,000 compensation for hurt and humiliation, and legal fees.

[2] On 7 June 2017, Cardy filed its statement in reply disputing the Authority’s jurisdiction to investigate Mr Dempsey’s claims as they related to an employment relationship problem which was more than six years after the date on which the cause of action arose. The statement in reply also claimed that Mr Dempsey was a

contractor, not an employee and that Mr Dempsey had terminated his contractor agreement in September 2009. Cardy says therefore no monies were owing by it to Mr Dempsey.

[3] Further the statement in reply stated that the personal grievance claims brought by Mr Dempsey had not been raised within ninety days and therefore could not be commenced in the Authority beyond three years after the grievance was raised pursuant to s.114(1) and (6) of the Employment Relations Act 2000 (the Act).

The Authority's investigation

[4] On 19 June 2017, the Authority convened a telephone conference. Mr Dempsey participated along with Mr Donovan, for Cardy.

[5] It was agreed that the Authority would determine whether or not it had jurisdiction to investigate Mr Dempsey's claims, as a preliminary issue. The parties agreed to a timetable by which Mr Dempsey would seek legal advice and file submissions with any supporting evidence in support of his claim that the Authority had jurisdiction to deal with his employment relationship problems.

[6] Mr Dempsey was to provide submissions and supporting evidence by 19 July 2017. Mr Donovan on behalf of Cardy was to file any submissions and supporting evidence in reply by 2 August 2017. Mr Dempsey sought an extension to file his submissions and supporting evidence until 26 July 2017. The Authority agreed to the extension and gave a similar extension to Cardy to respond by 9 August 2017.

[7] Mr Dempsey failed to comply with the timetable despite requests by the Authority to do so.

[8] Mr Donovan for Cardy now seeks a determination in respect of the preliminary matter.

Determination

[9] On the information provided to me, it is my view that there was a contractor agreement entered into between Mr Dempsey and Cardy on 13 March 2008 which was terminated on 17 September 2009, almost 8 years ago.

[10] No personal grievances were raised by Mr Dempsey with Cardy within this almost 8 year period, until he filed his statement of problem in the Authority on 21 May 2017. This was not within the 90 day time frame set out in s114(1) of the Act.

[11] I accept the submission on behalf of Cardy that applications to the Authority in relation to personal grievances must be raised within 90 days and thereafter cannot be commenced in the Authority beyond three years after the date the grievance was raised (s.114(1) and (6) of the Act).

[12] Further, Mr Dempsey's other claims, which were not personal grievances, were not raised by him within six years after the date on which the cause of action arose, (s.142 of the Act).

[13] On this basis, the Authority does not have jurisdiction to investigate and determine Mr Dempsey's claims.

Costs

[14] Costs are reserved. The parties are encouraged to agree costs. If they are not able to do so, Cardy has 14 days from the date of this determination to file a memorandum as to costs and Mr Dempsey has 14 days from receipt of Cardy's memorandum in which to reply.

Anna Fitzgibbon
Member of the Employment Relations Authority