



Employment Court of New Zealand

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Dent v Waikato District Health Board [2017] NZEmpC 76 (13 June 2017)

Last Updated: 19 June 2017

IN THE EMPLOYMENT COURT AUCKLAND

[\[2017\] NZEmpC 76](#)

EMPC 13/2015

EMPC 264/2016

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

AND IN THE MATTER of proceedings removed from the
Employment Relations Authority

AND IN THE MATTER of admissibility of evidence

BETWEEN ERIN THERESE DENT Plaintiff

AND WAIKATO DISTRICT HEALTH BOARD
Defendant

EMPC 136/2015

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

AND BETWEEN WAIKATO DISTRICT HEALTH BOARD Plaintiff

AND ERIN THERESE DENT Defendant

Hearing: 31 May 2017
(Heard at Auckland)

Appearances: E Dent, plaintiff in person
A Russell, counsel for Waikato District Health
Board

Judgment: 13 June 2017

INTERLOCUTORY JUDGMENT OF JUDGE M E PERKINS REGARDING APPLICATION TO HAVE CERTAIN DOCUMENTS DECLARED INADMISSIBLE

ERIN THERESE DENT v WAIKATO DISTRICT HEALTH BOARD NZEmpC AUCKLAND [2017] NZEmpC

76 [13 June 2017]

Introduction

[1] This interlocutory judgment deals with an application by the Waikato District Health Board (WDHB) to have certain documents

declared inadmissible. The dispute as to the documents arises from the preparation of the bundle of documents, which has been directed to be completed for the purposes of the hearing of the substantive proceedings.

[2] Mr Russell, counsel for WDHB, had previously agreed to take responsibility for the preparation of the bundle of documents. On behalf of the Board, he has taken objection to the extent of documents which the plaintiff, Ms Dent, wishes to have included in the bundle.

[3] In support of the application, the WDHB has filed an affidavit of George Lello, affirmed and dated 20 March 2017. In that affidavit, Mr Lello (who is a law clerk employed by the solicitors acting for WDHB) has exhibited a file note recording a meeting between Mr Russell and Ms Dent in relation to her request to have boxes and volumes of documents included in the bundle for the substantive hearing. In addition, Mr Lello has exhibited to his affidavit an index for the documents.

[4] The application classifies four types of documents to which objection is now taken by WDHB. These are as follows:

(a) Ms Dent's health and safety file held by WDHB;

(b) Employment Relations Authority documents; (c) evidence of awareness of culture of mobbing; (d) policy documents.

[5] Ms Dent has filed a notice of opposition to the application by the defendant. In summary, the grounds of her opposition are that the documents are relevant, they contain historic information in relation to her allegations giving rise to her grievance

claims, they are procedurally appropriate and also bear on the process which has already taken place in these proceedings and in particular the proceedings before the Employment Relations Authority (the Authority).

[6] The hearing for these proceedings, which includes challenges from both parties, is now set down to commence on 4 September 2017 in the Employment Court at Hamilton. The estimated time for the hearing is two weeks. This fixture has been set down following the adjournment of a fixture previously allocated. In an attempt to see if the matter can be resolved, the parties have now agreed to attend a Judicial Settlement Conference. This will take place in the Employment Court at Auckland over two days, beginning on Monday 3 July 2017 and continuing on Tuesday 4 July 2017.

[7] Following the hearing of the WDHB's present application on 31 May 2017, it was my intention to delay issuing this judgment until after the Judicial Settlement Conference. However, on reflection, a judgment on this issue may assist the parties with the settlement conference. If the settlement conference is not successful in resolving the dispute, this judgment will also enable more rapid advancement of timetabling directions in preparation for trial. Accordingly, I have decided to issue the judgment now. Another factor I have taken into account in deciding to issue the judgment now is that during the course of the hearing on 31 May 2017, some agreement was reached and concessions made on the extent of the documentation which should be admissible at the substantive hearing.

[8] When analysed, the documentation which is objected to by WDHB is not all that extensive. As Mr Russell indicated at the hearing, of the three volumes which Ms Dent wishes to have included in the bundle of documents, approximately the equivalent to one half of one of the folders is objected to. Obviously, these documents are spread throughout the three volumes. This indicates that the majority of the documents which Ms Dent wishes to have included are consented to by WDHB.

[9] Insofar as Ms Dent's health and safety file is concerned, she wishes to have documents included which date back to 2000. Mr Russell objects to these

documents on the basis that they are so historical that they cannot be relevant to the grievances, which apart from a higher duties allowance claim, arose from 2012 onwards. In response, Ms Dent has submitted that the health and safety file contains confirmation of complaints she made about bullying and her medical concerns relating to a back injury. She maintains the documents will confirm that she could not work in jobs which were allocated to her, and accordingly, this is part of the factual matrix relating to a number of the grievances she has raised.

[10] It is not possible at this stage, prior to the substantive hearing, to make a final determination on how relevant all of the documents on the health and safety file are. Certainly, health and safety issues have been raised by Ms Dent in her grievances claims. The Court has a wide discretion to admit documents,¹ and it is not appropriate to debar Ms Dent from having this file available. Even though she is representing herself, she has shown during the interlocutory hearings before me that she is well versed with her claims and is quickly able to point to the relevance of documents when she has been requested to do so.

[11] Accordingly, the health and safety file should be included in the bundle of documents.

[12] Insofar as the Authority documents are concerned, it is clear that Ms Dent has misunderstood something previously indicated to her. The pre-trial directions already issued refer to the fact that documents produced at the Authority investigation are not automatically transferred to the Court upon a challenge being filed. Accordingly, such documents need to be retrieved by the parties from the Authority if they are to be produced at the Court hearing. This only refers to documents which Ms Dent produced at the investigation meeting as exhibits. However, she has taken it to include briefs of evidence, statements of problems, minutes and other administrative papers of the Authority.

[13] Having spoken to Ms Dent at the hearing on 31 May 2017, I believe she now understands that not all of these documents can be produced at the hearing before the

Court, as the majority are not admissible. The Authority's determination is already

available, but new briefs of evidence need to be prepared for the Court hearing. It is also likely that new witnesses, who did not give evidence before the Authority, will be giving evidence at Ms Dent's request at the Court hearing. Any administrative documents held on the Authority's file are of no relevance to the Court hearing. Therefore, only the documents which she produced at the investigation meeting as exhibits will be admissible. The other documents referred to are not.

[14] Having said that, for the purposes of assisting with the Judicial Settlement Conference, I have requested Mr Russell and Ms Dent to prepare a bundle containing all of the statements of problem which have been filed with the Authority, together with a schedule linking those statements of problem to the dates and circumstances of the alleged raising of grievances with the WDHB by Ms Dent. If this matter is not settled at the Judicial Settlement Conference, then that bundle and the accompanying schedule may be of assistance to the Court at the substantive hearing, and therefore those particular documents should be available to the Court. Whether they are admissible will be a matter for the Judge hearing the matter to decide at the time.

[15] The third category of documents to which WDHB objects relates to what Ms Dent refers to as evidence of an awareness of a culture of mobbing. This involves Ms Dent's wish to produce documents about other employees and their concerns. Ms Dent's wish to produce this evidence appears to be for the purposes of showing a propensity on the part of the WDHB to inadequately deal with the alleged culture of mobbing. As pointed out to Ms Dent at the hearing, and with which I think she now agrees, if she wishes to rely on such evidence at the substantive hearing, she will need to call the other employees as witnesses. Any objection to their giving evidence or producing documentary exhibits of their own would need to be dealt with at the hearing. It would not be proper to simply allow statements from these employees and related documents to come before the Court by being placed in a bundle of documents. It may well be that in any event, the other employees or former employees involved may not wish to give evidence, and serious issues of privacy and confidentiality arise. Accordingly, these documents are not to be included in the bundle. Ms Dent will need to deal with this evidence at the trial.

[16] The final category of documents is classified as Policy Documents. These consist of the WDHB's Protected Disclosure Policy and the Delegations of Authority Policy. These policy documents apparently consist of 126 pages. Having regard to the nature of Ms Dent's claims, these documents appear to be relevant and may also be of assistance to the Court at the hearing and in reaching its decision in this matter.

[17] In conclusion and in summary therefore, Ms Dent's health and safety file should be included in the bundle of documents. As far as the Authority's exhibits are concerned, any document which was truly produced at the investigation meeting as an exhibit can be retrieved from the Authority and included in the bundle of documents. All other Authority documents are not admissible, apart from the bundle containing the statements of problem being prepared for the Judicial Settlement Conference and which may later be of assistance to the Court at the substantive hearing if that proceeds. Insofar as the evidence relating to the culture of mobbing is concerned, Ms Dent will need to deal with that by calling witnesses at the hearing and persuading the Court that their evidence and any document they wish to produce is relevant and admissible. Finally, the two policy documents, being the Protected Disclosure Policy and the Delegations of Authority Policy, should be included in the bundle of documents, although it may be preferable to have them bound separately.

[18] Prior to concluding this judgment, I record clarification of a point I made to Ms Dent at the hearing on 31 May 2017 relating to [18] of her notice of opposition. In this paragraph, she stated that I had previously indicated that any personal grievances before 2013 will be determined at the hearing. This is not correct. What was stated in my minute of 10 November 2016 was that issues as to whether personal grievances before 2013 were properly raised, if at all, will be matters to be determined at the hearing. The grievances themselves will not be determined unless Ms Dent can establish that they were properly raised within time, and even then, an issue may arise as to whether they are properly encompassed within the determination and Ms Dent's challenge to the determination.

[19] Costs are reserved.

M E Perkins

Judge

Judgment signed at 1 pm on 13 June 2017