

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 416  
5467666

BETWEEN                      RICHARD JOHN EARDLY  
   Applicant  
  
A N D                              CONQUEROR  
   INTERNATIONAL LIMITED  
   Respondent

Member of Authority:      T G Tetitaha  
  
Representatives:              D B Iremonger/H P Jones, Counsel for the Applicant  
   T McGinn, Counsel for the Respondent  
  
Investigation Meeting:      On the papers  
  
Submissions Received:      28 August 2014 from the Respondent  
   11 September 2014 from the Applicant  
  
Date of Determination:      10 October 2014

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**DETERMINATION OF THE AUTHORITY**

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**A.    The application to transfer this file from Auckland to  
Christchurch is granted.**

**Employment relationship problem**

[1]    The applicant, Richard John Eardly, was employed as a Sales Manager by Conqueror International Limited on or about 3 February 2014. His employment was subsequently terminated pursuant to a 90 day trial period on 28 February 2014.

[2]    There is a preliminary issue about the appropriate place for lodging the statement of problem and whether the file should be transferred from Auckland to Christchurch. Both parties were directed to file submissions and the matter would be dealt with on the papers.

## Determination

[3] The applicant filed his statement of problem in Auckland on or about 30 June 2014. The respondent submits this does not comply with Reg.13 Employment Relations Authority Regulations 2000. This is because Auckland is not the *“nearest by the most convenient route to the place at which the events that gave rise to the problem occurred”* (Reg 13(1)(a)). It states this place is Christchurch because several events leading to and including the dismissal occurred there. It has filed evidence<sup>1</sup> showing:

- (a) The applicant was employed as a “Sales Manager”.
- (b) He was employed to grow sales and service customers throughout the country, North and South Islands. The entire country was his sales territory.
- (c) The applicant was required to report to the CEO, Gary Hall, based in Christchurch.
- (d) The applicant was required to attend a number of monthly meetings in Christchurch, although skype was contemplated if he was on the road.
- (e) The applicant had a “roving job” that enabled him to live anywhere in New Zealand with the benefits of modern technology provided he met company requirements.
- (f) Examples of the applicant’s employment activities were attached, including dealings with customers and suppliers in Wellington and various locations in the South Island.

[4] The applicant objects to the transfer of this matter to Christchurch. It submits there is no evidence to support any failure by the applicant to genuinely and reasonably consider the requirements of Reg.13, nor evidence of any dubious motivation for filing the application in Auckland. The applicant’s sworn evidence<sup>2</sup> states:

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<sup>1</sup> Affidavit RC Stott sworn 28 August 2014

<sup>2</sup> Affidavit R Eardly in response to affidavit of R C Stott, sworn 10 September 2014

- (a) He was employed as a Sales Manager primarily responsible for growing the North Island sales.
- (b) He was based in Auckland due to the shared day-to-day care of his four children.
- (c) His role was fulfilled primarily by way of email or telephone from his base in Auckland.
- (d) He received email inquiries from all over New Zealand.
- (e) The transfer of proceedings to Christchurch is designed to cause delay, cost and inconvenience to the applicant.

[5] Regulation 13 Employment Relations Authority Regulations 2000 states:

**13 Place for lodging originating document**

(1) *Every application or other originating document lodged with an officer of the Authority must be lodged in such office of the Authority (being an office in Auckland, Wellington, or Christchurch)—*

- (a) *as the person lodging the application or other originating document considers to be nearest by the most convenient route to the place at which the events that gave rise to the problem occurred; or*
- (b) *as is agreed on by the parties and noted on the application or other originating document.*

(2) *An officer of the Authority or member of the Authority may, of his or her own motion, or upon application, direct the transfer of any proceedings from any office of the Authority to any other office of the Authority.*

[6] Regulation 13(1)(a) requires “*the person lodging the application*” namely the applicant, to consider the appropriate office of the Authority for filing. The test in s13(1)(a) is a subjective test because it is the applicant who determines where the application is to be filed. The Court has held an applicant may file their statement of problem where it considered was the nearest Authority office to where the events

arose. Any deficiencies can then be dealt with by the Authority member by way of transfer if required under Reg. 13(2).<sup>3</sup>

[7] The exercise of my discretion under Reg. 13(2) must be exercised with regard to the matters set out in Reg. 13(1)(a) and the requirements of my role set out in s157 Employment Relations Act 2000. The inherent purpose of Reg. 13(1)(a) must be to ensure the matter is dealt with nearest to the location of the majority of witnesses and evidence. Unless there is evidence or agreement to a more convenient forum for hearing, Reg. 13(1)(a) must apply.<sup>4</sup>

[8] The employment relationship problem before me is one of unjustified dismissal that occurred on or about 28 February 2014. The dismissal was communicated to the applicant by way of undated letter received by the applicant on or about 21 February 2014. The letter was handed to him when he was in Christchurch. The parties evidence shows the employment agreement was concluded and dismissal occurred in Christchurch. The respondent's CEO is also located in Christchurch.

[9] The applicant's place of work is not a causative event for the problem. His employment agreement does not specify his place of work. The fact the applicant and his Counsel reside nearest to Auckland, is not determinative in considering whether to exercise my discretion under Reg 13. It is the office nearest to where the events giving rise to the problem that determines the exercise of my discretion. There is no evidence of any event giving rise to the problem in Auckland.

[10] In the circumstances, the application for transfer is granted and the file is transferred to Christchurch.

[11] Costs are reserved.

**T G Tetitaha**  
**Member of the Employment Relations Authority**

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<sup>3</sup> *Orakei Koraka Geyserland Resort (2000) Ltd v. Unsworth EmpC* Auckland AC50/09, 17 December 2009 at [22]

<sup>4</sup> *Wyatt-Martin v Coastlines Ltd* ERA Christchurch CA158/08, 23 October 2008