

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2016] NZERA Christchurch 144
5410528

BETWEEN

MONIR EL FARRA
Applicant

AND

MUSLIM ASSOCIATION OF
CANTERBURY
INCORPORATED
Respondent

Member of Authority: Christine Hickey

Representatives: John Coyle, Advocate for the Applicant
Dean Kilpatrick, Counsel for the Respondent

Determination: 25 August 2016

DETERMINATION OF THE AUTHORITY

- A. The applicant's claims are dismissed.**
- B. The respondent's counter claims are dismissed.**
- C. Costs are reserved.**

Employment relationship problem

[1] Monir El Farra lodged an application with the Authority on 14 February 2014 making various claims against his former employer the Muslim Association of Canterbury Incorporated.

[2] The parties attended mediation in February 2013.

[3] On 6 March 2014, the respondent filed its statement in reply which outlined a number of counter claims against the applicant.

[4] On 15 January 2016, after my direction, the applicant filed a statement in reply to the counter claims.

[5] As early as 27 March 2014, Member Loftus, who dealt with the file before he moved to the Wellington office of the Authority, set down a date for an investigation meeting in Christchurch. That date was 24 June 2014.

[6] On 21 May 2014, Mr Coyle notified that Authority that the applicant, who had returned to the USA, was having problems obtaining a visa to return to New Zealand.

[7] Member Loftus adjourned the investigation meeting. He held a teleconference with both representatives and advised Mr Coyle that as there were issues of credibility it was unlikely that he would agree to the applicant appearing at the investigation meeting by teleconference.

[8] On 6 November 2015, Mr Coyle notified that Authority that applicant was ready to proceed with his application and would be able to return to New Zealand for the investigation meeting.

[9] In consultation with both representatives, on 3 February 2016 I set a date for the investigation meeting of 18 and 19 May 2016.

[10] On 3 April 2016, Mr El Farra telephoned the Senior Authority Officer and enquired whether he could participate from overseas. He was told that would be unlikely as he was the prime witness. He confirmed that Mr Coyle had told him he would need to be in New Zealand for the investigation meeting. The Senior Authority Officer told Mr El Farra that he could apply, through his representative, to give evidence from overseas. However, it was unlikely that request would be granted.

[11] On 14 April 2016, after a request from the respondent, on the basis one of the respondent's main witnesses would be overseas on the May 2016 dates, I adjourned the investigation meeting until 16 and 17 August 2016.

[12] On 3 May 2016, Mr El Farra again telephoned the Senior Authority Officer and seemed uncertain what was happening with his claim. The Senior Authority

Officer told him the dates of the investigation meeting, again told him it was unlikely he would be given permission to give his evidence from the USA and advised him to contact Mr Coyle.

[13] On 30 May 2016, Mr Coyle wrote:

My client would prefer to [appear by] video but will come if necessary.

Previously, when his visa was in question the Authority member at that time rejected a video conference, and delayed the investigation.

There are issues of time zones. I prefer to have my client attending.

Those dates appear suitable subject to my client's confirmation. He has requested a letter from the Authority requesting his attendance as a principal witness.

[14] On 30 May 2016, I issued a Notice of Direction notifying that I would not accept the applicant's attendance by video conference and stating that if he was not present in person he risked his claims being dismissed.

[15] Both parties provided written witness statements and relevant documents in advance of the investigation meeting, as I had directed. I prepared to undertake the investigation meeting and make a determination.

[16] At 9.11 am on 15 August 2016, Mr Coyle advised:

My client was prevented to leave for New Zealand by immigration at the LA airport. Consequently he is unable to attend the investigation as scheduled.

[17] At 9.30 am on 16 August 2016, the date and time the investigation meeting was due to commence, I held a teleconference with both parties and advised them that I was dismissing the applicant's claims for want of prosecution and that as the respondent's claims were counter claims they were also dismissed.

[18] Initially, Mr Coyle was dismayed at the result and asked if I had any way of investigating why his client had not been able to board the flight in Los Angeles. I explained that was not within my jurisdiction and nor is it my role. It was up to the applicant to return to New Zealand to prosecute his claims. Mr Kilpatrick indicated that his client did not intend to lodge its claims as a fresh application against the applicant and was content for all matters to be dismissed.

[19] Mr Kilpatrick has since notified me that his client does not intend to seek costs against the applicant, if this determination is the end of the proceedings. However, if this determination is challenged the respondent reserves its right to seek costs for the Authority proceedings.

[20] Therefore, I have reserved the issue of costs.

Christine Hickey
Member of the Employment Relations Authority