

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

**[2019] NZERA 724
3060332**

BETWEEN IGOR GRIGOROVICH
Applicant

AND PRECISE LIMITED
Respondent

Member of Authority: Eleanor Robinson
Representatives: Applicant in Person
Simon Martin Counsel for the Respondent
Investigation Meeting: On the papers
Submissions received: 30 October & 29 November 2019 from Applicant
5 November 2019 from the Respondent
Determination: 19 December 2019

DETERMINATION OF THE AUTHORITY ON A PRELIMINARY MATTER

Employment Relationship Problem

[1] The Applicant, Mr Igor Grigorovich, is claiming that he was unjustifiably dismissed, and unjustifiably disadvantaged as a result of having to assume administrative duties, and by being bullied and harassed in the workplace by the Respondent, Precise Limited (Precise).

[2] Precise denies that Mr Grigorovich was unjustifiably dismissed or disadvantaged, and claims that he was justifiably dismissed for serious misconduct.

[3] Mr Grigorovich is claiming that HRL Holdings NZ Limited (HRL) should be added as a Respondent to the proceedings before the Authority on the basis that HRL's Chief Executive Officer was instrumental in the restructuring of Precise, which involved removing the positions of the Auckland branch administrator and requesting Mr Grigorovich to take an administrative duties.

[4] The parties agreed to the Authority determining this preliminary issue based on the Statement of Problem and the Statement in Reply, documents submitted by the parties, and on submissions from the parties.

Issues

[5] The preliminary issue for determination is whether or not HRL should be added as a Respondent to the proceedings brought by Mr Grigorovich.

Brief Key Facts

[6] Precise is an IANZ Accredited laboratory specialising in providing consultancy services including in asbestos testing and surveys, hazardous materials management, and methamphetamine testing.

[7] Mr Grigorovich commenced employment with Precise on 22 January 2018 as a Trainee HAZMET Consultant.

[8] Precise underwent a restructure in October/November 2018 which, after a formal consultation process, resulted in the disestablishment of Precise's Auckland Administrator position and all staff being asked to attend to their own administrative needs.

[9] Mr Grigorovich claims that he attempted to re-negotiate a new agreement with Precise as a result of the restructure and in retaliation Precise took disciplinary action against him, up to and including the termination of his employment.

[10] Difficulties in the employment relationship between Mr Grigorovich and Precise developed in late 2018 after Mr Grigorovich was placed on a performance improvement plan.

[11] In February 2019 Precise became aware that Mr Grigorovich may have used its courier account without authorisation to send personal items to Ukraine. Precise also became aware that Mr Grigorovich may have undertaken a number of unauthorised actions including accessing Precise's premises outside of work hours to collect and use its testing equipment and vehicle, created a false account in connection with this and using the testing equipment for personal use.

[12] Following a formal investigation procedure Mr Grigorovich's employment was terminated for serious misconduct on 5 March 2019.

The Applicant's Submissions

[13] Mr Grigorovich submits that Precise is a wholly owned subsidiary of HRL and that in late 2018 HRL's owners were several weeks visiting Precise's Auckland branch and initiating the restructure of Precise.

[14] Mr Grigorovich submits that it was the decision of HRL's owners to eliminate the Auckland Administrator position and as a result him being asked to attend to his own administrative needs.

[15] As a direct result of his challenging this decision Precise took disciplinary action and terminated his employment.

The Respondent's Submissions

[16] The Respondent submits that joining HRL to these proceedings would prevent the Authority effectively disposing of this matter which is the reason for joinder set out in s 221 of the Employment Relations Act 2000 (the Act).

[17] The Respondent submits that there is no employment relationship between HRL and Mr Grigorovich and that the sole decision-maker in relation to Mr Grigorovich's employment was Mr Andrew Fear, the former General Manager of Precise.

[18] It is submitted that HRL was not involved in any manner in any of the decisions related to Mr Grigorovich's employment.

[19] Moreover Mr Fear will be available at the Investigation Meeting to provide evidence and address all aspects of Mr Grigorovich's claim before the Authority.

Should the HRL be joined to the proceedings before the Authority?

[20] Section 221 of the Act allows the Authority to direct that parties been joined or struck out if that will assist the Authority to more effectively dispose of the matter.

[21] In *Colosimo v Parker* the Employment Court identified the principles which apply when considering the correct identity of the employer.¹ The later judgment of *Wilson v Bruce Wilson Painting & Decorating Limited* referred to these principles as being:

- (a) The onus of proving the identity of the employer rests on the employee (where the employee is putting that fact in issue)

¹ *Colosimo v Parker* (2007) 8 NZELC 98,622

- (b) The standard of proof is on the balance of probabilities.
- (c) The question of who the employer was must be determined at the outset of employment.
- (d) It is necessary to apply an objective observation of the employment relationship at its outset with knowledge of all relevant communications between the parties; the question to be asked is who would an independent but knowledgeable observer have said was the employer.
- (e) Failure to notify or make an employee aware of the identity of the employer is not conclusive.²

[22] The employment agreement entered into by Mr Grigorovich identifies the employer as being Precise Consulting and Laboratory Limited.

[23] The Employee Handbook containing the employers policies and procedures submitted by Mr Grigorovich identifies the employer as being Precise Consulting and Laboratory Limited.

[24] I find that Precise was clearly identified as the employer at the outset of employment.

[25] The documents submitted by Mr Grigorovich includes the performance improvement plan dated January 2019 and identifying Mr Stuart Glen as Manager. Mr Grigorovich stated in the Statement of Problem that he reported at one stage to Mr Glen, the Precise North Island Manager.

[26] The documents submitted by Mr Grigorovich with the Statement of Problem include many communications between Mr Fear and Mr Grigorovich including:

- a letter dated 17 July 2018 signed by Mr Fear and informing Mr Grigorovich of his annual salary increase;
- the notice of resignation sent by Mr Grigorovich to Mr Fear; and
- communication between Mr Fear and Mr Grigorovich concerning a bullying and harassment claim made by Mr Grigorovich.

[27] It was Mr Fear who wrote the letter dated 21 February 2019 informing Mr Grigorovich of a formal disciplinary action, and the letter dated 1 March 2019 setting out his findings and proposed disciplinary action.

² *Wilson v Bruce Wilson Painting & Decorating Limited* [2014] NZEmpC 83 at [13]

[28] It was Mr Fear who wrote and signed the letter setting out the final decision, being termination of Mr Grigorovich's employment. In the letter Mr Fear makes statements which support the submission that he was the decision-maker including:

I am writing further to my letter of 1 March 2019 which set out my findings and proposed disciplinary actions

I considered that disciplinary action was appropriate ...

I provided you with an opportunity to comment on this proposed disciplinary action ...

I have considered your comments ...

I have decided to confirm the summary termination of your employment. ...

[29] I am satisfied that the identity of Mr Grigorovich's employer was Precise, and that the attendance of Mr Fear will be sufficient to assist me in effectively disposing of the matter before me. I find that there is no basis to join HRL to the proceedings.

[30] I determine that HRL should not be joined as to the proceedings before the Authority.

Next Steps

[31] I have determined that Precise Limited is the correct and sole respondent in this matter.

[32] Clearly the process undertaken by Precise during the matters involving Mr Grigorovich, and the decision reached which resulted in his dismissal, will fall to be determined in the substantive investigation.

[33] The Authority will therefore contact the parties shortly to progress the matter.

Costs

[34] Costs are reserved pending the final resolution of the matter.

Eleanor Robinson
Member of the Employment Relations Authority