



# Employment Court of New Zealand

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## Khurana v Singh [2016] NZEmpC 156 (23 November 2016)

Last Updated: 28 November 2016

### IN THE EMPLOYMENT COURT AUCKLAND

#### [\[2016\] NZEmpC 156](#)

EMPC 59/2016

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

BETWEEN DEEPAK KHURANA Plaintiff

AND SURENDER SINGH Defendant

**EMPC 61/2016**

IN THE MATTER OF a challenge to a determination of the  
Employment Relations Authority  
AND BETWEEN JAG RAWAT Plaintiff  
AND SURENDER SINGH Defendant

Hearing: On the papers - joint memorandum of counsel  
dated 10  
November 2016

Appearances: M McGoldrick, counsel for plaintiff Mr Khurana  
A Gallie, counsel for plaintiff Mr Rawat  
S Laurent, counsel for defendant

Judgment: 23 November 2016

### CONSENT JUDGMENT OF JUDGE M E PERKINS

[1] These proceedings involve challenges by both plaintiffs to a determination of a preliminary issue by the Employment Relations Authority (the Authority) dated

10 February 2016.<sup>1</sup>

1 *Singh v Corporate Energy Ltd (in liquidation) formerly known as Corporate Energy Limited t/a Caltex Glenbrook* [2016] NZERA Auckland 38.

[2] The history of the proceedings is set out in an interlocutory judgment of the Court dated 20 July 2016.<sup>2</sup> There is no need to repeat those matters in this judgment, the purpose of which is to record a settlement reached between the parties as to disposal of the challenges.

[3] A joint memorandum of counsel dated 10 November 2016 has now been filed. This records the proposed settlement of the challenges against the determination of a preliminary issue. The settlement will mean that the Authority, which has been standing by

pending the outcome of the challenges, will now be able to continue with its investigation meeting. That will involve a continuation of the investigation meeting of the defendant, Mr Singh's, claim against Corporate Energy Ltd (in liquidation). The Authority in an earlier determination dated 27 May 2015

had already held that company as the true employer of Mr Singh. 3

[4] Following the interlocutory judgment of this Court dated 20 July 2016, Mr Singh has been successful in obtaining an order from the High Court that he may continue his proceedings against the company in liquidation.

[5] The joint memorandum of counsel proposes that the Court make orders:

(a) Re-joining the company Corporate Energy Ltd (in liquidation) to the

Authority proceedings;

(b) Striking out the plaintiffs from the Authority proceeding; and-

(c) Declaring the present challenges to be at an end as they are rendered otiose by the previous orders sought.

[6] In relation to costs, the joint memorandum of counsel also proposes the making of orders so that the issues of costs in both the Authority and Court to date are resolved.

[7] Before setting out the Court's judgment giving effect to the settlement between the parties, reference is made to s 183 of the Employment Relations Act

<sup>2</sup> *Khurana v Singh* [2016] NZEmpC 91.

<sup>3</sup> *Singh v Corporate Energy Ltd t/a Caltex Glenbrook* [2015] NZERA Auckland 152.

2000 which sets out the requirements upon, and the effect of the decision of, the Court when dealing with a challenge. The relevant parts of the section read as follows:

(1) Where a party to a matter has elected under section 179 to have that matter heard by the court, the court must make its own decision on that matter and any relevant issues.

(2) Once the court has made a decision, the determination of the Authority on the matter is set aside and the decision of the court on the matter stands in its place.

...

[8] Having regard to that section, rather than making the orders sought in declaring the present challenges to be at an end as they are rendered otiose, the better course is to allow the challenges by consent, thereby setting aside the determination. That also has the effect of setting aside the determination of the Authority striking Corporate Energy Ltd (in liquidation) out as a party. Corporate Energy Ltd (in liquidation) would then remain or be reinstated as the sole respondent in the Authority proceeding, thereby enabling the Authority to simply continue with its investigation into Mr Singh's grievances.

[9] Rather than making the orders which are sought in the joint memorandum of counsel, but nevertheless to give effect to the settlement reached, the following more appropriate orders are made:

(a) By consent the plaintiffs' respective challenges are allowed.

(b) The determination of the Authority striking out Corporate Energy Ltd (in liquidation) as respondent and joining the plaintiffs as respondents is set aside.

(c) For the sake of clarity, reinstatement of Corporate Energy Ltd (in liquidation) as sole respondent in the Authority proceedings is confirmed.

(d) In relation to costs in both the Authority proceedings and the Court proceedings to date, the following orders are made by consent:

(i) Costs in the present substantive challenges shall lie where they fall.

(ii) The costs awards against the plaintiffs in the Authority's

costs determination of 18 April 2016 are set aside.<sup>4</sup>

(iii) The defendant is ordered to pay within 14 days to each of the plaintiffs costs on the interlocutory applications for security for costs (in the sum of \$3,568 to each of the plaintiffs), together with payment of their filing fees on the challenges (in the sum of \$204.44 to each of the plaintiffs).

[10] As the determination which was challenged was only on a preliminary issue and not a final resolution of the proceedings before the Authority, the Authority will now simply continue its investigation into the matter rather than the Court being required to take over and hear the dispute.

[11] As noted in the interlocutory judgment of the Court dated 20 July 2016, the liquidator of Corporate Energy Ltd (in liquidation) had

refused to give Mr Singh permission to continue with the proceedings against the company. That decision of the liquidator is now overtaken by the High Court order authorising Mr Singh to continue with the proceedings before the Authority. It is not for this Court to direct the liquidator how to proceed from this point. The liquidator will now no doubt consider a number of options. One may be whether to participate in the further investigation of the Authority, or whether to take no part. Another alternative may be for the liquidator to admit liability and abide by the Authority's determination as to quantum. That portion of Mr Singh's wages claim which has priority in the liquidation might then be paid to him with the balance of his claim, including any compensation and other awards, resting in the liquidation as that of an unsecured

creditor. However, those are all matters for the liquidator to now decide upon.

4 *Singh v Khurana* [2016] NZERA Auckland 117.

[12] If the parties wish to have the orders now made in this judgment formalised, then an amended order of the Court may be submitted to the Registrar for sealing.

[13] Finally, while not forming any part of the orders of the Court, it is recorded that in the joint memorandum of counsel the parties agreed that the defendant would not issue a summons to either of the plaintiffs or otherwise seek their involvement in any investigation meeting which the Authority continues against Corporate Energy Ltd (in liquidation).

M E Perkins

Judge

Judgment signed at 4 pm on 23 November 2016

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