

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2017] NZERA Auckland 395  
5554418

BETWEEN

KERRY MANCER  
Applicant

A N D

QUALITY TRANSFER AND  
LABELS (NZ) LIMITED  
Respondent

Member of Authority: T G Tetitaha  
Representatives: K Gill for Applicant  
B Evans for Respondent  
Investigation Meeting: On the papers  
Date of Determination: 21 December 2017

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**DETERMINATION OF THE AUTHORITY**

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**A. The proceeding is dismissed as vexatious. Each party to meet its own costs.**

**Employment relationship problem**

[1] Kerry Mancer filed a Statement of Problem on 1 April 2015 alleging unjustifiable actions and an unjustifiable dismissal by the respondent, Quality Transfer and Labels (NZ) Limited.

[2] The parties were referred to mediation on 21 September 2015. The matter was referred to the Member following a refusal by the respondent to attend mediation due to cost and alleged harassment by the applicant. The parties were directed back to mediation on 30 October 2015.

[3] This matter was returned to the Member in April 2016. A telephone conference was unable to be set down with the parties until 6 October 2016.

[4] A Minute issued on 6 October 2016 timetabling the filing of evidence and setting down a two day investigation meeting date on 21 and 22 February 2017.

[5] The applicant applied for an extension to 16 December 2016 to file its briefs. Unfortunately the file was not able to be dealt with by the Member until 21 December 2016. At that stage the applicant had failed to file any briefs of evidence. Given the time elapsed and continuing failure to file evidence the extension was refused. The applicant was required to file a short memorandum, explaining why there was failure to comply with the timetabling orders.

[6] By 20 February 2017 no memorandum or further evidence was filed. As a consequence the hearing was set aside. The applicant was directed to advise by 6 March 2017 at 3pm whether he intended pursuing his application or if it was to be withdrawn. If no advice was received a hearing on the papers shall be considered whether to strike out this matter.

[7] On 7 December 2017 after reviewing the file I directed the Registry to contact the parties again to seek advice about the progress of the file. The parties were advised again that I intended striking this matter out with each party to meet their own costs in the circumstances. The parties had until 11 December 2017 3 pm to file any submissions about striking out the application. No submissions have been filed by either party.

### **Strike out**

[8] I have the power under clause 12A Schedule 2 of the Employment Relations Act 2000 to dismiss frivolous or vexatious proceedings:

#### **12A Power to dismiss frivolous or vexatious proceedings**

(1) The Authority may, at any time in any proceedings before it, dismiss a matter or defence that the Authority considers to be frivolous or vexatious.

(2) In any such case, the order of the Authority may include an order for payment of costs and expenses against the party bringing the matter or defence.]

[9] Where an applicant repeatedly fails to prosecute a claim the Court has struck out an application on basis it has become vexatious.<sup>1</sup>

[10] Given the non-compliance with the timetabling orders and the efforts to contact the parties to progress this file, this proceeding falls within the category of vexatious.

[11] In circumstances the proceeding is dismissed. Each party to meet its own costs.

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

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<sup>1</sup> *Jerard v Wildbourne* [2013] NZEmpC 144 at [13].