

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 100
5412288

BETWEEN LISA MARTIN-PAYNE
 Applicant

A N D RESERVE NEW ZEALAND
 LIMITED
 Respondent

Member of Authority: K J Anderson

Representatives: Lisa Martin-Payne in person
 Jo Taute, Advocate for Respondent

Investigation: On consideration of the papers

Date of Determination: 20 March 2014

DETERMINATION OF THE AUTHORITY

Reopening of investigation

[1] On 10 September 2013 the Authority received a *Statement of Problem* from the applicant, Ms Lisa Martin-Payne. Ms Martin-Payne claims that she was unjustifiably dismissed from her employment with the respondent, ReserveNewZealand Limited (RNZ). The outcome of a conference call convened by the Authority on 11 October 2013 was that an investigation meeting was scheduled for 30 January 2014. Ms Martin-Payne was required to provide a witness statement by 6 December 2013 and the witness statements for RNZ were due on 21 January 2014.

[2] On 22 November 2013 the Authority Support Officer sent an email to Ms Martin-Payne reminding her of the requirement to lodge and serve her witness statement by 6 December 2013. Because Ms Martin-Payne failed to comply with this timetable, on 9 December 2013 the Support Officer sent her a further reminder email seeking that Ms Martin-Payne lodge her witness statement “promptly”. No response was received.

[3] Via an email dated 18 December 2013, Ms Taute, for RNZ, raised the failure of Ms Martin-Payne to forward her witness statement, and conveyed that she would be on leave from 20 December 2013 and would not be returning to work until 20 January 2014. And given that the investigation meeting was set for 30 January 2014, Ms Taute (logically) enquired about where this “leaves the case”.

[4] In order to ascertain the intentions of Ms Martin-Payne, an email was sent to her by the Authority on 19 December 2013:

The Authority notes that Ms Martin-Payne has not filed her witness statement by 6 December 2013 and despite a second reminder sent on 9 December 2013, the Authority has heard nothing from her.

In regard to the investigation meeting set down for 30 January 2014, Ms Martin-Payne is required to indicate her intentions by not later than **5:00pm, Monday, 23 December 2013**. In the event that the Authority does not receive any communication from Ms Martin-Payne by this time, it will be taken that she does not wish to proceed with her claims, the Authority’s file will be closed and the investigation meeting will be abandoned.

There was no response from Ms Martin-Payne.

[5] On 13 January 2014, the Authority notified the parties that because Ms Martin-Payne had not made any contact, the investigation meeting set down for 30 January 2014 was abandoned and the file was closed.

[6] Remarkably, and without any explanation, Ms Martin-Payne lodged a witness statement with the Authority on 16 January 2014. However, she was informed of the steps that the Authority had taken to contact her (as above) and she was further informed that the investigation meeting had been abandoned and the file had been closed.

[7] On 17 January 2014 Ms Martin-Payne informed that she still wished to proceed with her “case” and gave a somewhat less than convincing explanation that due to the holiday period, she had not checked her emails and she “...misunderstood the email dialogue and instructions and apologise for my confusion”. Ms Martin-Payne conveniently, it seems, choose to ignore the fact that she had failed to meet the initial timetable, without explanation.

[8] The communication from Ms Martin-Payne was referred to RNZ for comment and a response was received on 20 January 2014; the general thrust of which conveyed incredulity regarding the actions (or lack of) by Ms Martin-Payne, particularly given the reminders she had received from the Authority. It was submitted by RNZ that the company had "...wasted significant time and resources" and given that Ms Martin-Payne had not followed due process, the matter should not be reopened.

[9] The request by Ms Martin-Payne to have the investigation by the Authority reopened is being treated as reasonably falling with the requirements of clause 4 of Schedule 2 of the Employment Relations Act 2000, albeit in this case, an earlier determination has not been issued.

Determination

[10] Clause 4 of Schedule 2 of the Employment Relations Act 2000 (the Act) provides that the Authority may order an investigation to be reopened upon such terms as it thinks reasonable, and in the meantime to stay the effect of any order previously made. And the reopened investigation need not be carried out by the same member. And pursuant to section 157(3) of the Act, the Authority must act as it thinks fit in equity and good conscience.

[11] Notwithstanding the very tardy behaviour of Ms Martin-Payne, the Authority is bound to apply its equity and good conscience jurisdiction and allow her the opportunity to have the merits of her claim that she was unjustifiably dismissed, examined by an independent decision making body.¹ In regard to the obvious inconvenience that the respondent has, and may further be put to, that is a matter that can, eventually, be addressed by an appropriate order for costs following the investigation and determination of the merits of the claims being pursued by Ms Martin-Payne.

[12] It is determined that Ms Martin-Payne shall have her claim that she was unjustifiably dismissed further investigated by the Authority. I also determine that it is appropriate that the matter should be investigated by another member of the Authority who will, in due course, contact the parties to discuss how that will occur.

¹ *Shore v Aqua-Cool Limited* AC 73/05, 5 December 2005.

[13] Finally, Ms Martin-Payne is expected to fully comply with all future directions and timetables set by the Authority.

K J Anderson
Member of the Employment Relations Authority