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McMurdo v NZ Motors 4WDS Limited [2024] NZERA 237 (23 April 2024)

Last Updated: 29 April 2024

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

I TE RATONGA AHUMANA TAIMAHI

TĀMAKI MAKAURAU ROHE

[\[2024\] NZERA 237](#)

3230379

3264639

BETWEEN	DEAN MCMURDO Applicant in 3230379 Respondent in 3264639
AND	NZ MOTORS 4WDS LIMITED Applicant in 3264639 Respondent in 3230379

Member of Authority: Sarah Blich

Representatives: No appearance for Dean McMurdo

Paul Pa'u, advocate for NZ Motors 4WDS Limited

Investigation meeting: Information received:

4 April 2024 in Auckland

At the investigation meeting from NZ Motors 4WDS Limited

Determination: 23 April 2024

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] These matters involve a personal grievance claim by Dean McMurdo against NZ Motors 4WDS Limited (NZ Motors) and a counterclaim by NZ Motors against Mr McMurdo. Mr McMurdo did not attend and was not represented at the investigation meeting.

[2] This determination now dismisses the parties' claims, with the Authority having given Mr McMurdo an opportunity to re-engage with the Authority investigation and having heard from NZ Motors on the outcome.

The Authority's process

[3] An investigation meeting was scheduled to hear these matters on 4 April 2024. The day prior, on 3 April 2024 the Authority received advice from Mr McMurdo's representative Dave

Cain, stating he had not heard from Mr McMurdo since about 25 March 2024. Mr Cain advised Mr McMurdo had not responded to his attempts at contact despite Mr Cain's efforts since that time.

[4] Mr Cain further advised that Mr McMurdo was aware of the investigation meeting and had been provided with copies of all relevant documents in readiness for the investigation meeting. However, Mr Cain was not certain of Mr McMurdo's intentions and in the absence of further instructions, his firm could no longer act for Mr McMurdo. Mr Cain stated there may have been a legitimate reason why Mr McMurdo could not be contacted, but he did not know at that point in time.

[5] Mr Cain also stated he no longer intended to travel from Hawkes Bay for the investigation meeting and if Mr McMurdo did attend, he would be without representation at the investigation meeting. Mr Cain advised he communicated his decision to Mr McMurdo by email, by text message and by voicemail. Mr McMurdo's personal email address was copied into Mr Cain's email.

[6] At around 9am on 4 April 2024 an Authority Officer called Mr McMurdo's personal mobile number, which had been provided by Mr Cain. Mr McMurdo did not answer the call and the Authority Officer left a voicemail asking Mr McMurdo to call the Authority. He did not do so. Mr McMurdo did not attend the investigation meeting scheduled at 10am. At 10am the Authority Officer again called Mr McMurdo's mobile number and left a voicemail message asking for him to call. Again, he did not do so.

[7] The Authority started the investigation meeting at around 10.10am with only NZ Motors representatives in attendance. When asked about NZ Motors' intentions as to its counterclaim if Mr McMurdo's claim were to be dismissed, Mr Pa'u advised his instructions were that the counterclaim could be dismissed without any issue as to costs. Alternatively, NZ Motors indicated it would be willing to withdraw its counterclaim in the event Mr McMurdo's claim was dismissed, on the basis there was no issue as to costs.

[8] The investigation meeting was adjourned on 4 April 2024 to allow the Authority to issue a Minute, which it did the same day. The Minute recorded the above circumstances and stated if Mr McMurdo wished to pursue his unjustified dismissal claim in the Authority, he must advise of that by 15 April 2024. It also advised Mr McMurdo would need to give reasons

for his non-attendance at the investigation meeting along with any supporting evidence showing why he failed to attend. The Minute warned if Mr McMurdo did not confirm he wished to pursue his claim, the Authority would dismiss the claim, as there would essentially be no case for NZ Motors to answer. The Minute was both emailed to Mr McMurdo's personal email address and sent to his last known residential address, as provided by Mr Cain.

[9] The date of 15 April 2024 passed without contact from Mr McMurdo. NZ Motors' advocate subsequently requested that Mr McMurdo's claim be dismissed, saying there would be no issue as to costs, and that the counterclaim could also be dismissed with no issue as to costs.

[10] On 16 April 2024 the Authority sent an email to the parties including to Mr McMurdo confirming it had not received any communications from Mr McMurdo and given this, the Authority intended to issue a written determination dismissing Mr Murdo's application, with no issue as to costs.

Outcome

[11] Having given Mr McMurdo an opportunity to re-engage with the Authority investigation, and with NZ Motors' not wishing to pursue its counterclaim, the Authority dismisses both applications 3230379 and 3264639.

Costs

[12] Given NZ Motors does not wish to pursue costs and Mr McMurdo stance on costs is unknown, the Authority

finds costs must lie where they fall. No order for costs is made.

Sarah Blick

Member of the Employment Relations Authority

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