

1. *Mr Sharma's statements is actually fabricated and based on the false assumptions thus is not genuine.*
2. *Due to my sole commitment to the shop that I have to run 7 days a week I have not been able to gather all the possible proof/documents and witnesses that I would like to bring into the knowledge of the respective authority during the reopening of file No.530803.*
3. *Moreover, I am in stress due to threatening and harassment by Mr.Sharma by visiting personally to my shop and by phone for a dear consequences if I do not pay his illegitimate claim immediately. I reported the incident to the Avondale police station (and **under REF.P008840884**) for my protection. This threatening affected my health and caused me lots of stress that I had to be seen by my family doctor. I have fear in sending my children to school alone as he warned me that he has done **murders** in India and does not really need to stay in New Zealand due to his family wants him to do some business there.*

Therefore I request the honourable authority, kindly give me an opportunity to produce my witnesses and proof during the second hearing.

[4] In considering the application the Authority issued the following direction to the parties and Mr Shaikh in particular:

I require Monopoliz Supplies Limited (Mr Shaikh) to provide affidavits in relation to the "proof/documents and witnesses" referred to as part of the grounds for reopening this case.

The proof/documents need to be referred to or provided in the affidavit, which is to be sworn or affirmed by any witness.

Mr Shaikh is to provide an affidavit to explain whether this new evidence could reasonably have been obtained by him for the investigation meeting held previously and, if it was not available, why not.

The affidavits are to be filed by 5pm on Friday 28 October 2011.

Mr Sharma will be sent copies and I will consider them in deciding whether to grant the reopening application and, if so, on what conditions that will be granted.

[5] No affidavits or information of any kind has been received from Monopoliz Supplies Ltd or Mr Sharma. Instead the Authority received from a lawyer instructed by Monopoliz Supplies Ltd a request for an extension of time to provide this material, by 18 November 2011, in order to allow full instructions to be obtained and for the filing of the required documents. This request arrived by email in the Authority at 4.59pm on Friday 28 October 2011.

[6] A copy of the request was sent to Mr Sharma for any response he wished to give and he has advised that Monopoliz Supplies Ltd is “just wasting time.” He referred to the failure by the company to provide a statement in reply at the very beginning of the investigation, a failure by Mr Shaikh to attend on time at the investigation meeting which had proceeded over three days between September 2010 and April 2011, and a failure to provide proof at the investigation meeting. He also referred to the delay of two months after the issue of the determination before Mr Shaikh on behalf of Monopoliz Supplies had applied for a reopening, and a failure to observe the directions of the Authority to provide by affidavit further material in support of his application.

[7] Mr Sharma asked the Authority to give a decision as Mr Shaikh has failed again and again and so that he can collect his money from the civil Court through recovery as Mr Shaikh is just wasting his time, he said.

[8] As pointed out by Mr Sharma, Monopoliz Supplies Ltd was granted indulgences during the investigation. The failure by the company to provide a statement in reply was not met as it could have been with a refusal by the Authority to consider any response or reply of the company but instead Mr Shaikh was heard from. He made references to documents relating to the transfer of the business that could have been supplied to the Authority by him but were not and in the end the Authority had to summons a witness to provide evidence about that matter, the evidence being adverse to Monopoliz Supplies Ltd as it turned out.

[9] The Authority is none the wiser as to what evidence Mr Shaikh would now like it to consider as a basis for reopening the investigation and it does not know why such evidence could not have been provided by Mr Shaikh in his company’s own interests in bringing a lengthy investigation to a close much earlier. It would have been in his interests to have brought those witnesses to the Authority if they had had material evidence in relation to the disputed matter of Mr Sharma’s employment by the company after the transfer of the business.

[10] Monopoliz Supplies Ltd was given an opportunity to throw more light on the existence of this evidence and the nature of it but has failed to take that up. In the circumstances it seems a reasonable response from Mr Sharma to claim that Monopoliz Supplies Ltd is just wasting time and merely trying to avoid enforcement of the Authority’s determination.

Determination

[11] I decline to grant an extension to the time limit given for Monopoliz Supplies Ltd to provide the affidavits requested. Without such supporting material I find that the grounds put forward in support of reopening are inadequate and therefore the Authority declines the application for reopening.

A Dumbleton

Member of the Employment Relations Authority