



Employment Court of New Zealand

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Morava Group Limited v Clark [2016] NZEmpC 171 (20 December 2016)

Last Updated: 22 December 2016

IN THE EMPLOYMENT COURT AUCKLAND

[\[2016\] NZEmpC 171](#)

EMPC 258/2016

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

BETWEEN MORAVA GROUP LIMITED
Plaintiff

AND SUSAN CLARK Defendant

Judgment: 20 December 2016

JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] On 17 October 2016 Morava Group Ltd (Morava) filed a challenge to the determination of the Employment Relations Authority issued on 19 September

2016.1 The Authority decided that Morava had dismissed Susan Clark unjustifiably and awarded her monetary remedies.

[2] Morava's address for service was 23 Kelmarna Avenue, Ponsonby in Auckland, and a mobile telephone number and email address were provided for Nick Webster, Morava's notified representative in the litigation. The 23 Kelmarna Avenue address appears to be a residential property.

[3] Morava's statement of claim, filed by Mr Webster (a director of, and 50 per cent shareholder in, Morava), did not comply with the minimum requirements of such a document in reg 11 of the [Employment Court Regulations 2000](#) (the Regulations).

¹ *Clark v Morava Group Ltd* [2016] NZERA Auckland 318.

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[4] On 19 October 2016 the Court issued a Minute requiring the plaintiff to file and serve an amended statement of claim which complies with reg 11 of the Regulations within the following 14 days. The requirement for the defendant to plead to the original statement of claim was waived until a compliant amended statement of claim was filed and served.

[5] On 30 November 2016 the Registry referred the file to me for further directions. The court record notes that on 3 November 2016 Mr Webster was contacted by Registry staff who advised him that he would need to seek the leave of the Court to extend the date for filing an amended statement of claim, having not done so within the required 14-day period. The Registry received an email from Mr Webster on 25 November 2016, stating that he would contact the Registry again on 28 November 2016. This did not occur.

[6] Accordingly, on 30 November 2016 the Court issued a further Minute directing that the plaintiff had a further 14 days from the date of service of that Minute on it, within which to comply with the earlier directions, failing which the challenge would be struck out for

want of prosecution but reserving an entitlement to the defendant to apply for costs. The Registry was directed to ensure that the Minute was served on the plaintiff at its address for service and a record of this kept.

[7] No further step has been taken by the plaintiff. I am satisfied from New Zealand Couriers' records supplied to the Registry, that this Minute was delivered to the plaintiff at its address for service at 11.57 am on 1 December 2016. The delivery was to the letter box at this address which was nominated by the plaintiff as its address for service and which has not subsequently been changed. The Minute was also sent to the email address for service provided by Mr Webster.

[8] In these circumstances, the plaintiff having taken no steps to comply with the earlier directions of the Court, its challenge is dismissed for want of prosecution. Leave was reserved for the defendant to apply for any orders in respect of costs which she may have expended in her defence of the proceedings although I expect

that there will be few, if any, in this category. It is, of course, now open to the defendant to enforce the Authority's orders if these have not been complied with.

GL Colgan

Chief Judge

Judgment signed at 9 am on 20 December 2016

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