

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2015] NZERA Wellington 65
5459034

BETWEEN SIMON JOHN PARTICK
 O'NEILL
 Applicant

AND HAWKEYE UAV LIMITED
 Respondent

Member of Authority: M B Loftus

Representatives: Simon O'Neill, on own behalf
 Rowland Harrison, for Respondent

Investigation Meeting: On the papers

Submissions Received: 3 July 2015 for Applicant
 3 July 2015 for Respondent

Determination: 13 July 2015

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In June 2014 the applicant, Simon O'Neill, filed a claim he had been unjustifiably dismissal by the respondent, Hawkeye UAV Limited (Hawkeye). There was also a claim for outstanding pay.

[2] During the Authority's investigation of his claim he and Hawkeye resolved their differences. The terms of settlement were recorded by the Authority as a consent determination.¹

[3] Mr O'Neil now asks that the Authority re-open its investigation. He does so on the grounds that:

- a. Hawkeye has failed to comply with one of the terms of settlement; and

¹ [2015] NZERA Wellington 15

- b. He has also failed to comply with one of the terms of settlement but only because Hawkeye failed to provide a precursor necessary for performance of the term.

[4] Hawkeye opposes the application.

[5] The parties agree the reopening claim should be determined on the papers.

Determination

[6] A reopening may occur where there are good grounds for doing so. The grounds relied upon here are Hawkeye's failure to adhere to the terms of settlement and the fact this has *prolonged the matter and caused me* [Mr O'Neill] *more stress and consumed more time pursuing what should have been a closed issue.*

[7] This is not, I conclude, an application I can grant. The substantive matter was disposed of by the issuing of the consent determination. It provided the terms agreed by the parties became orders of the Authority.

[8] The Employment Relations Act 2000 provides that a failure to comply with an order of the Authority be addressed via a compliance action.² The Act does not provide for reopening in such circumstances. I therefore conclude that where a statutory remedy exists it should be followed and it is inappropriate I condone an alternate course of action.

[9] Even if that were not the case I would conclude the grounds are not sufficient to order what is in effect a complete reconsideration of the initial application. This is for three reasons.

[10] First there is evidence Hawkeye tried to comply with its obligation in respect to [3](a) above but its endeavours were stymied by an administrative error. The error was rectified once Hawkeye was advised but unfortunately that was after Mr O'Neill had filed his reopening application. In these circumstances the failure would not justify a complete rehearing.

[11] Second and if as alleged inaction by Hawkeye has made it impossible for Mr O'Neill to comply with his obligations it is unlikely he faces any adverse consequences. Again this does not justify a reopening.

² Section 137(1)(b)

[12] Third the evidence is Hawkeye is no longer trading and has no assets. It is apparent it would not defend Mr O'Neill's claim should there be a reopening. There is little sense in putting Mr O'Neill to further cost or inconvenience in such circumstances especially as it would do nothing other prolong the matter and add further stress.

[13] For the above reasons I conclude I do not have the ability to grant this application but even if I did I would not be persuaded to do so. The application Mr O'Neill's claim be reopened is declined.

[14] It is normal costs follow the event but neither party was represented and neither incurred reimbursable legal costs. In order to avoid additional effort or expense for the parties I therefore order costs lie where they fall.

M B Loftus
Member of the Employment Relations Authority