

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 293/09
5154484**

BETWEEN JANENE PARLANE
 Applicant

AND RON DYKMAN LIMITED
 Respondent

Member of Authority: Leon Robinson

Representatives: Paul Farry, Counsel for Applicant
 No appearance by Respondent

Investigation Meeting: 20 August 2009

Determination: 20 August 2009

DETERMINATION OF THE AUTHORITY

Application for Removal

[1] The respondent employer company Ron Dykman Limited asks the Authority to remove the applicant Ms Janene Parlane's ("Ms Parlane") claim of unjustifiable dismissal and a parental leave complaint, to the Employment Court.

[2] The application for removal was set down for investigation meeting today so that the parties could be heard. A notice of investigation meeting was served on Ron Dykman Limited at its registered office on 1 July 2009 and the courier post records show a signature reading "Ron Dykman". There is also a letter from the Authority to Ron Dykman Limited dated 30 June 2009 confirming today's investigation meeting. The director of Ron Dykman Limited, Mr Ronald William Dykman ("Mr Dykman") has provided correspondence to the Authority dated 3 August 2009 which relates to today's scheduled investigation meeting.

[3] Ron Dykman Limited does not appear before the Authority today to be heard on its application that this matter be removed to the Employment Court. Ms Parlane appears today by her counsel to oppose the application.

[4] I asked the support officer to make contact with Mr Dykman. The support officer informs me that she spoke with Mr Dykman at about 10.10am today. Mr Dykman advised that he was not told about the investigation meeting and that he had never been notified by email or post box. He said that perhaps the notification he received two months ago was notification but he did not diarise it. Mr Dykman was told by the support officer the scheduled investigation meeting was in progress. Mr Dykman confirmed to the support officer he would not be attending.

[5] At 11.07am today Mr Dykman transmitted by facsimile to the Authority this advice:-

*Sir, Unfortunately I missed this mornings matter of referral sought to court, for what ever reasons, my apology. None the less my request and case is clear and you will choose as you see fit. I note nearly every week or two a Herald report of ongoing absurd outcomes at the ERA. I consider it to be a corrupted institution proliferating itself to preserve high paid jobs for the likes of you and dozens in offices under you. No matter what I will not be extorted or tolerate bullshit like I read in the Herald with monotonous regularity. I will be appealing and I continue to prepare to make a discusting private prosecution against Farry/Palane jointly + separately for extortion, intent to pervert, perjury in due course.
Sincerely
R Dykman*

[6] I do not accept that Ron Dykman Limited was not advised of the investigation meeting today. I am satisfied that Ron Dykman Limited has not shown good cause for its failure to attend to be heard on its application. I proceeded to act as fully in the matter as if Ron Dykman Limited had attended or been represented¹.

[7] I deal with the application on its merits and not on a default basis. I assess the merits of the application on the basis of documents entitled "*Sworn written statement*

¹ Clause 12 Schedule 2 *Employment Relations Act 2000*.

of *R W Dykman Application for Removal of a Matter to the Employment Court at Auckland* dated 3 July 2009 and further document entitled "*Sworn Affidavit of Ronald William Dykman*" sworn before a solicitor on 3 July 2009 ("the affidavit"). I also consider submissions made by Mr Farry in a statement in reply dated 27 May 2009 opposing the application for removal, as well as counsel's oral submissions today.

The facts

[8] Ron Dykman Limited is a limited liability company incorporated on 3 November 2000. It trades in the design and construction of garden landscapes and leisure areas.

[9] Ms Parlane was formerly employed by Ron Dykman Limited. She lodged a statement of problem in the Authority on 18 March 2009. She claims she has a personal grievance for unjustifiable dismissal and a parental leave complaint. The parties attended mediation but the problems between them were not resolved.

The merits

[10] Under section 178 of the *Employment Relations Act 2000* ("the Act") some matters may be removed to the Employment Court for hearing and determination without the Authority investigating the matter. That section provides:-

178. Removal to Court

(1) *Where a matter comes before the Authority, any party may apply to the Authority to have the matter, or part of it, removed to the Court for the Court to hear and determine it without the Authority investigating the matter.*

(2) *The Authority may order the removal of the matter, or any part of it, to the Court if—*

- (a) *an important question of law is likely to arise in the matter other than incidentally; or*
- (b) *the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court; or*
- (c) *the Court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or*

- (d) *the Authority is of the opinion that in all the circumstances the Court should determine the matter.*
- (3) *Where the Authority declines to remove any matter, or a part of it, to the Court, the party applying for the removal may seek the special leave of the Court for an order of the Court that the matter or part be removed to the Court, and in any such case the Court must apply the criteria set out in paragraphs (a) to (c) of subsection (2).*
- (4) *An order for removal to the Court under this section may be made subject to such conditions as the Authority or the Court, as the case may be, thinks fit.*
- (5) *Where the Authority, acting under subsection (2), orders the removal of any matter, or a part of it, to the Court, the Court may, if it considers that the matter or part was not properly so removed, order that the Authority investigate the matter.*
- (6) *This section does not apply—*
- (a) *to a matter, or part of a matter, about the procedure that the Authority has followed, is following, or is intending to follow; and*
 - (b) *without limiting paragraph (a), to a matter, or part of a matter, about whether the Authority may follow or adopt a particular procedure.*

[11] I now deal with the grounds for removal as far as I am able to discern them from the affidavit document.

New Zealand Bill of Rights Act 1990

[12] The first ground is found in these statements in the affidavit:-

4. *Regardless of Section 178 of the act we now further sight "exhibit A" The New Zealand Bill of Rights Section 6 on the knowledge that my rights might be affected. *I have the right to a fair hearing by an unbiased decision maker and *the right to apply for judicial review of any decision, I have the right to bring civil proceedings against Paul Farry and Janene Parlane and the Crown.*

5. *Clearly exercising my rights, if denied access, by the ERA to the employment court, a question in law, an important question is likely to arise effecting both employers and employees.*

[13] I understand Mr Dykman to be referring to section 27 of the *New Zealand Bill of Rights Act 1990*. Section 27 of that Act is this:-

27. *Right to justice*
- (1) *Every person has the right to the observance of the principles of*

natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.

(2) *Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.*

(3) *Every person has the right to bring civil proceedings against, and to defend civil proceedings brought by, the Crown, and to have those proceedings heard, according to law, in the same way as civil proceedings between individuals.*

[14] He acknowledges that this ground does not relate to section 178 of the Act. There can be no question of law arising. It is not therefore a ground I am able to consider.

Duplicated proceedings

[15] I call the next ground the "duplicated proceedings" ground. I have understood Mr Dykman to mean that ground from these statements:-

6. *I am researching and preparing a private prosecution which is likely to be served on both Janene Parlane and Paul Farry as accomplices under law whereby I believe that a number of criminal acts are involved in the pair attempting to extort me Notice has been give to the parties "Exhibit B" attached.*

7. *I believe that by that time section 178(2)(c) will become relevant in that there will be proceedings between the same parties involving related issues. I say the matter, all be it simple will take time to bring to the court for obvious reasons. I am engaging a senior Barristers help.*

[16] The said Paul Farry is Ms Parlane's lawyer in this investigation. The said "Exhibit B" is a letter Mr Dykman wrote to the Partners of Farry & Co, Ms Parlane's lawyers. The letter is dated 26 June 2009 and advises that *"the preparation of documents and evidences sworn seeking a prosecution against you for a number of offences under criminal law will be served to your private home and to your company. The directors and other parties will be advised also of your actions"*. The remainder of the letter includes possibly defamatory statements about other unrelated persons, including persons whom I understand to be Judges of the Family Court of New Zealand.

[17] The reference to "Court" in the Act is to the Employment Court and no other². I do not accept that the proceedings by way of private prosecutions for "extortion" will be called before the Employment Court because I do not understand that court to have such a jurisdiction. If I am correct in that view, I do not accept that there could be proceedings in that court which would also involve these parties and which would also involve the same or similar or related issues. **I find that there is no ground to remove the matter on this basis.**

Little chance of fair hearing

[18] I call the next ground the "little chance of fair hearing" ground. I understand that to be what Mr Dykman refers to at these statements:-

8. *I further say that I have little chance of a fair hearing in these Matters to which I am lawfully entitled because Exhibit "C" shows just two examples of the parties attempting to taint the adjudicators view of my person.*

9. *I have further made very clear my disdain for both the DOL Mediator, and the ERA and I have published Herald Reports which further lead me to doubt the authority and its indiscretions published this year "Exhibit D"*

[19] The said "Exhibit C" is a letter Mr Farry wrote to Mr Dykman dated 5 March 2009. There are these statements in that advice:-

The complete disregard you have for the Employment Relations Authority only serves to confirm the likelihood that our client would not receive any fair hearing or treatment from you.

and

It is interesting to note that despite your disdain for the Employment Relations Authority and your alleged experience with its policies and procedures you nevertheless proceeded in contravention of the law.

² See section 5 *Employment Relations Act 2000*.

[20] There is also a further letter dated 11 June 2009 Mr Farry wrote to Mr Dykman which contains this statement about Mr Dykman:-

... he has a dislike for and does not trust the Employment Relations Authority

[21] The said "Exhibit D" is a copy of an article in the New Zealand Herald on 3 June 2009 headed "*Personal grievance awards go higher and lower*" which concerns an analysis by the Employers and Manufacturers Association (Northern) of "payouts" or compensation awards by the Employment Relations Authority.

[22] Mr Dykman's apparent disdain of the Authority does not constitute grounds for removal under section 178 of the Act. **I find that there is no ground to remove the matter on this basis.**

A Question of law

[23] The next ground I call the "question of law" ground. Mr Dykman says this:-

10. I say I have evidence of extortion and indeed internal corruption of the mediator that is under investigation and I say that the DOL mediation process is an integral part thereof; (and in discussion) of the ERA process and the parties report to each other. The fact that there is an important question of law under the act being reviewed by the DOL at present directly related to this matter seriously calls into question the wisdom of hearing this matter in the ERA rather than the Court. I have documented evidence already that shows the DOL are concerned deeply, and covering up.

[24] I do not know what the said evidence is because Ron Dykman Limited does not attend to tell me. Nor do I know what the important question of law being said to be under review by the DOL is.

[25] By proceeding in the Authority, Ron Dykman Limited is not prevented from pursuing matters in the Employment Court. He will as a matter of course, be entitled to challenge any determination by the Authority to the Employment Court by way of a

de novo hearing. Section 179 of the Act gives this statutory right to Ron Dykman Limited:-

179 Challenges to determinations of Authority

(1) A party to a matter before the Authority who is dissatisfied with the determination of the Authority or any of that determination may elect to have the matter heard by the Court.

(2) Every election under this section must be made in the prescribed manner within 28 days after the date of determination of the Authority.

[26] I am unable to say there is a question of law because I am not told what that question is. I cannot remove the matter on this basis.

Precluded perjury and facilitation of extortion

[27] Next Mr Dykman says that Ms Parlane has a "*criminal intent*" and that "*the matter is becoming a matter of a criminal act, not one that should be reviewed by the authority but the courts*". He says that "*denying [him] a court hearing facilitates the acts of extortion, and precludes perjury if heard in the authority, as a charge I can put on both Farry and Parlane in a court later*".

[28] Ron Dykman Limited is not denied a court hearing. It is free to challenge any determination by the Authority to the Employment Court. As concerns perjury, Mr Dykman's understanding is not correct. Clause 8 of Schedule 2 to the Act provides:-

8. Power to take evidence on oath

(1) The Authority may take evidence on oath and, for that purpose, any member of the Authority, or any other person acting under the express or implied direction of the Authority or a member of the Authority, may administer an oath.

(2) On any indictment for perjury it is sufficient to prove that the oath was administered in accordance with subclause (1).

[29] There are no grounds for removal on these points.

Breach of Natural Justice

[30] Mr Dykman says:-

14. *The fact that the seeking of costs is inhibited, as is the seeking of appeal against an ERA decision, is a blatant breach of my access to Natural Justice.*

15. *I say the ERA must award me free access to a court of law forthwith and that all of Paul Farries reasons and quoted case laws bear no real relevance to this matter.*

[31] I am not entirely certain what Mr Dykman means by costs being "inhibited". I do note however that Clause 15 of Schedule 2 to the Act empowers the Authority to order any part to pay costs and expenses. As for "the seeking of appeal" being inhibited, I do not accept that because of the clear entitlement to seek a *de novo* hearing in the Employment Court at section 179 of the Act.

[32] There are no grounds for removal on these points.

Primary remedy

[33] Finally, Mr Dykman says:-

16. *I offered J.Parlane the Primary Remedy; Twice Refused.*

[34] Whether or not that was so, it is not a ground for removal.

The residual discretion

[35] There is a residual discretion section 178(2)(d) to remove the matter if the Authority is of the opinion that in all the circumstances the Court should determine the matter.

[36] I am not persuaded there are any such circumstances. On the contrary, I see nothing that persuades me that Ms Parlane, or Ron Dykman Limited, should be deprived of the requirement for a first instance Authority investigation as Parliament intends they should have.

The determination

[37] For the reasons stated above, **I decline to exercise my discretion to order the removal of this matter to the Employment Court.**

[38] Ron Dykman Limited is entitled to challenge my refusal to remove this matter to the Court. I refer Ron Dykman Limited to section 179 of the Act which I have reproduced above at paragraph [25] in this regard. Any challenge must be filed within 28 days of the date of this Determination.

[39] Ron Dykman Limited is also entitled to seek the Employment Court's special leave that the matter be removed to that Court. That special leave is sought under subsection 178(3) of the Act which is reproduced at paragraph [10] above, and Regulations 14 - 16 of the *Employment Court Regulations 2000*.

[40] This investigation is suspended for 28 days.

The costs

[41] If costs are sought they are reserved.

Leon Robinson
Member of Employment Relations Authority