

NOTE: This determination contains orders prohibiting publication of certain information at [17]

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 154
3317620

BETWEEN	REH Applicant
AND	CRC Respondent

Member of Authority: Shane Kinley

Representatives: Hayley Johnson, advocate for the applicant
Greg Lloyd, counsel for the respondent

Investigation Meeting: 13 March 2025 at Masterton

Determination: 13 March 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] REH filed an application raising an employment relationship problem against CRC.
- [2] CRC denied the claims underpinning REH's application.

The Authority's investigation

[3] A case management conference call was held on 6 November 2024 with the parties' advocate and counsel respectively. At this call, the issues for investigation by the Authority were identified as set out above. An investigation meeting was set down for 13 March 2025 in Masterton, with the agreement of both parties. Timetabling orders for the provision of witness statements and other documents by both parties were also

made. A copy of these timetabling directions, as well as a notice of hearing, was sent to both parties' representatives.

[4] REH and CRC filed witness statements and evidence, including a supporting witness statement on behalf of CRC.

[5] Both parties were sent a Notice of Investigation Meeting, setting out (among other things) the date, time, and venue for the investigation meeting. REH's advocate confirmed to me that REH had been provided with the Notice of Investigation Meeting.

[6] REH did not attend the investigation meeting this morning.

[7] REH's advocate advised at the investigation meeting that they were in contact with REH until earlier this week and had made arrangements to meet REH earlier this morning before the scheduled investigation meeting. REH has, for at least yesterday and today, failed to respond to phone calls and emails from their advocate. I was present, along with CRC's counsel, when REH's advocate attempted to call REH shortly after the scheduled time for the investigation meeting to commence.

[8] I provided REH's advocate a brief additional window to attempt to contact REH. When this was unsuccessful, I commenced the investigation meeting and advised the representatives that I intended to proceed to dismiss the application for lack of prosecution, subject to comment from the representatives.

[9] REH's advocate confirmed they had been unable to contact REH and accepted my intended approach was appropriate in the circumstances. CRC's counsel agreed and advised they did not consent to an adjournment.

[10] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

[11] I am satisfied that REH was aware of the scheduled investigation meeting and that they received the Notice of Investigation Meeting, which advises that if the applicant does not attend the investigation meeting the matter may be dismissed.¹

¹ Note 1 to Form 8 of the Employment Relations Authority Regulations 2000.

[12] Given that, the absence of explanation of REH's absence, along with their failure to respond to multiple approaches from their advocate, I conclude it appropriate I apply the regulations and dismiss the application for lack of prosecution.

Order

[13] For the above reasons, I dismiss REH's application for lack of prosecution.

Non-publication orders

[14] At the investigation meeting, CRC's counsel requested I issue non-publication orders under cl 10(1) of sch 2 of the Act, based on CRC's comment they had wanted to clear their name. REH's advocate agreed non-publication orders were appropriate.

[15] I am satisfied non-publication orders are appropriate taking into account the Court's judgments in *MW v Spiga Ltd*² and *KN v New Zealand Steel Ltd*.³

[16] CRC has not had the benefit of a hearing where they could present their response to REH's claims and have the chance to clear their name. CRC has also provided evidence which I consider is sensitive and personal, which is not in the public interest to be disclosed.

[17] I order under cl 10(1) of sch 2 of the Act that CRC and their supporting witness' names and identifying details, as well as their evidence are not to be published. In order to not identify CRC, I also order under cl 10(1) of sch 2 of the Act that REH's name and identifying details, as well as their evidence are not to be published.

[18] The applicant and respondent are referred to by the anonymised letter sequences REH and CRC, which bear no resemblance to their real names.

Costs

[19] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. CRC's counsel has advised their client is legally aided which may impact on costs.

[20] If the parties are unable to resolve costs, and an Authority determination on costs is needed, CRC may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum

² *MW v Spiga Ltd* [2024] NZEmpC 147.

³ *KN v New Zealand Steel Ltd* [2024] NZEmpC 65.

REH will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[21] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors require an adjustment upwards or downwards.⁴

Shane Kinley
Member of the Employment Relations Authority

⁴ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1