

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2015] NZERA Christchurch 92
5544061

BETWEEN

DARYL SHERIFF
Applicant

AND

CHEP AEROSPACE LIMITED
TRADING AS CHEP
AEROSPACE SOLUTIONS
Respondent

Member of Authority: Christine Hickey

Representatives: Elizabeth Bickerton, Advocate for Applicant
Stephanie van der Wel, Counsel for Respondent

Determination: 6 July 2015

INTERLOCUTORY DETERMINATION OF THE AUTHORITY

CHEP Aerospace Limited's applications to strike out the applicant's claim for want of prosecution, and to issue an 'unless order' are dismissed.

Employment Relationship Problem

The claim

[1] I need to determine an application by the respondent to either dismiss Mr Sheriff's application for want of timely prosecution, or to issue an 'unless order' that unless he attends mediation within a reasonably short time-frame his claim will be dismissed.

Background facts

[2] On 19 February 2015 Ms Bickerton lodged Mr Sheriff's personal grievance application claiming that he had been unjustifiably dismissed. On 5 March 2015

Ms van der Wel filed a Statement in Reply on CHEP Aerospace Limited's (CHEP) behalf.

[3] Mediation was arranged by the Mediation Service for 1 May 2015. On 30 April 2015 Ms Bickerton advised Ms van der Wel that she was unable to confirm Mr Sheriff's attendance at the mediation, and therefore she cancelled the mediation appointment.

[4] CHEP's Manager of Human Resources flew to New Zealand from Australia to attend the mediation and had already arrived by the time Ms Bickerton notified Ms van der Wel that the mediation could not proceed. In addition, CHEP's counsel had air tickets booked to travel to Christchurch for the mediation.

[5] On 5 June 2015 Ms van der Wel applied to the Authority to either:

- (i) Dismiss Mr Sheriff's claim on the basis that he has failed to prosecute his claim in a timely manner; or
- (ii) Issue an "unless order" stating that unless Mr Sheriff attended mediation by 1 July 2015 the proceedings would be dismissed.

[6] The Authority understands from Ms van der Wel's application that Ms Bickerton advised her after 30 April 2015 that she had:

still not been able to locate or speak to the applicant regarding not appearing at mediation and/or progressing his claim.

[7] Ms Bickerton has not responded to the application to dismiss although the Authority Officer sent her a copy of it by email on 9 June 2015 asking for her response.

Determination

Authority's jurisdiction to deem proceedings abandoned for non-compliance or to issue an 'unless order'

[8] The Authority does not have jurisdiction to dismiss Mr Sheriff's application at this stage or to issue an unless order as requested by the respondent. That position

was confirmed by the Court of Appeal in *Employment Relations Authority v Rawlings*:¹

[15] The direction of the Authority was akin to the sort of “unless order” which the High Court in practice employs only as a last resort and where there has been a history of failure to comply with other orders, see Hytec Information Systems Ltd v Coventry CC [1997] 1 WLR 1666 at p 1674. Such orders are available in the Employment Court under r 6 of the [Employment Court Regulations 2000](#) but are, no doubt, sparingly used.

...
[17] Although the deemed withdrawal was probably of limited intended effect, it is doubtful whether it was within the powers of the Authority.

*[18] The Act does not confer on the Authority an explicit power to make unless directions or to deem proceedings abandoned for non-compliance.*²

Conclusion

[9] The application is dismissed for lack of jurisdiction.

[10] If the Authority Officer dealing with this case has not heard anything from Ms Bickerton by 31 July 2015 indicating that Mr Sheriff is ready to proceed with his claim the file will be closed and not actively followed up by the Authority unless Mr Sheriff or his representative contacts the Authority and requests that it be activated.

[11] If nothing is heard from Mr Sheriff or his representative by 19 February 2018 the application will be deemed to be withdrawn under clause 14(2) of Schedule 2 of the Employment Relations Act 2000.

Costs

[12] The respondent has indicated to Ms Bickerton and the Authority that it reserves its position to claim costs, including travel costs, associated with the cancelled mediation. I reserve consideration of those costs and of the costs associated with making this application.

Christine Hickey
Member of the Employment Relations Authority

¹ [2008] ERNZ 26

² Ibid. , at pages 31-32.