



New Zealand Employment Relations Authority Decisions

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Singh v Dheil Limited [2019] NZERA 373 (21 June 2019)

Last Updated: 27 June 2019

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

I TE RATONGA AHUMANA TAIMAHI

TĀMAKI MAKĀURAU ROHE

[\[2019\] NZERA 373](#)

5469541

BETWEEN AMRIT PAL SINGH Applicant

AND DHEIL LIMITED Respondent

Member of Authority: Tania Tetitaha

Representatives: Applicant in person

No appearance by Respondent

Investigation Meeting: On the papers

Submissions Received: 1 February, 1 April and 10 May 2019 from the Applicant

Date of Determination: 21 June 2019

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1]

Amrit Pal Singh is a migrant worker employed to work in the respondents bar in

Auckland. He seeks to reopen this matter following his withdrawal and closure of the file on

1 September 2014. The file was closed following advice from the applicant that the matter had been resolved with the respondent and that he was withdrawing his case.

[2]

Mr Singh contacted the Authority on 26 October 2015 and 14 March 2016 regarding

reopening his employment case against his ex-employer. He alleged that he had been threatened and blackmailed by his employer to withdraw his case.

[3]

The file was allocated to me on or about 9 October 2018. I issued a minute requiring

Mr Singh provide more detail about his allegations of blackmail by his employers. He was directed to file further information.

[4]

On 10 October 2018 the applicant provided further details of some facts leading to the

withdrawal of his case. This included two persons involved in his employers' companies pleading guilty in the Auckland District Court on or about 20 August 2018 to a charge of blackmail. A summary of facts and confirmation of the sentencing was provided by Police Prosecutions on 10 May 2019.

Nonpublication order

[5]

The Police have advised on 1 April 2019 that there is a name suppression order for the

two defendants to allow them to appeal the refusal of permanent name suppression. To avoid any breach of the District Court orders, the two defendants' names shall not be published until further order of the Authority. They shall be referred to as Defendant A and B.

Relevant facts

[6]

The facts below are taken from the summary of facts that set out the alleged

offending:

[7]

On 16 January 2013 Mr Singh began working at the Glenfield Sports Bar which was

owned at the time by Dheil Limited. His work VISA conditions restricted him to working for the respondent only. He alleges his work conditions deteriorated and work hours increased

with little compensation.

[8]

The business was sold to Gaming and Sports Limited. Mr Singh signed a new

employment agreement.

[9]

On 10 June 2014 Mr Singh filed a statement of problem seeking payment for

excessive hours alleged to have been worked while employed by the respondent.

[10]

On 14 August 2014 while working at the Bar an incident occurred with an intoxicated

female patron resulting in her assaulting Mr Singh and her subsequently being arrested by the police.

[11]

The next day the daughter of the female patron asked the victim not to press charges

on the female patron who was her mother which he agreed to do. Mr Singh also advised his respondent employer of the incident.

[12]

On 28 August 2014 Defendant A arrived at the Bar while Mr Singh was working and

stated he wanted to talk to him about what happened at the Bar on 15 August.

[13]

Defendant A told Mr Singh that he had been advised by Defendant B that "from day

one he was not a good person and that he was stealing from them". Defendant A also stated that "what happened on the 15th proved that he was not an honest person."

[14]

Mr Singh was told by the Defendant A that Defendant B could make trouble for him

and they had done it to other people. He was also advised that they are prepared to track down the lady from the Bar on 15th August and offer her \$10,000 to say that he had raped her.

[15]

A letter was produced by the Defendants and Mr Singh was asked to sign it. Mr

Singh subsequently signed the letter in response to the threats resolving his employment investigation against Dheil Limited.

[16]

About a week after the meeting Defendant A asked Mr Singh if he had emailed the

Department of Labour (meaning the Employment Relations Authority). When he was told that Mr Singh had not, Defendant A stood over Mr Singh in the office at the Bar until he had

typed and sent the email withdrawing the matter.

[17]

The police have confirmed both defendants appeared in the District Court on 29

March 2019 and were convicted on a charge of blackmail. They were sentenced to ten months home detention. An application for name suppression was declined but may be appealed. The defendants were granted interim name suppression.

Reopening

[18]

Clause 4 Schedule 2 of the [Employment Relations Act 2000](#) empowers the Authority to reopen an investigation “upon such terms as it thinks reasonable.”

[19]

The overarching principle that applies to applications for a reopening or rehearing is whether it is necessary to avoid a miscarriage of justice.¹

[20]

Judgments based on fraudulent evidence may be set aside, but the threshold which an applicant must overcome is high. In particular, an application based on fraudulent evidence

¹ *Randall v The Warehouse Limited* [2019] NZEmpC 68.

needs to be fully particularised and supported by new evidence that would likely have a determinative effect on the outcome.²

[21]

There is sufficient evidence to show that the applicant’s withdrawal of his proceeding

was procured through illegal means including threats unless he complied. There is also the fact that the defendants were convicted and sentenced for blackmail for the same actions.

This is determinative there was a miscarriage of justice.

[22]

In the circumstances I order that this investigation be reopened. The file is to be allocated to a new Member.

TG Tetitaha

Member of the Employment Relations Authority

2 Puna Chambers Inc. v Christensen [2014] NZEmpC 218 at [17] citing *Commissioner of Inland*

Revenue v Redcliffe Forestry Venture Ltd [2012] NZSC 94, [2013] 1 NZLR 804 at [33].