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Sub 5 Private Security Limited v Gomez [2013] NZEmpC 62 (15 April 2013)

Last Updated: 23 April 2013

IN THE EMPLOYMENT COURT CHRISTCHURCH

[\[2013\] NZEmpC 62](#)

CRC 5/13

IN THE MATTER OF an application for rehearing

BETWEEN SUB 5 PRIVATE SECURITY LIMITED Plaintiff

AND ROBERT GOMEZ Defendant

Hearing: On the papers

Appearances: Barry Kay, agent for plaintiff

Judgment: 15 April 2013

JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] SUB 5 Private Security Limited (SUB 5) has applied to the Court to rehear its challenge to a determination of the Employment Relations Authority given on 29

May 2012,^[1] finding that Robert Gomez had been unjustifiably dismissed and awarding remedies totalling \$3,681.52.

[2] The application for rehearing is dismissed for the following reasons.

[3] The judgment of Judge AA Couch of 15 October 2012 dismissing SUB 5's challenge^[2] sets out the history of the challenge and refers, in particular, to SUB 5's non-appearance at the Court on 15 October 2012.

[4] Clause 5 of Schedule 3 to the [Employment Relations Act 2000](#) imposes a number of requirements on applicants for rehearing. Subclause (2) provides that this

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may not be granted on an application made more than 28 days after the decision or order, unless the Court is satisfied that the application could not reasonably have been made sooner.

[5] The application for rehearing was filed on 30 January 2013, some three and a half months after the judgment of the Court was issued. There is no suggestion that SUB 5 had not received a copy of the judgment immediately after it was issued, and indeed the application appears to acknowledge that it did so.

[6] There is no evidence or other explanation as to why the application for rehearing could not reasonably have been made either within the 28 day statutory period or even sooner than the two and a half months that elapsed after the expiry of the 28 day period. The statute requires the Court to be satisfied about this and there is simply no information which might even

begin to meet that test.

[7] The evidence of Barry Kay, the Security Director of the plaintiff, explains why it was not represented at the hearing of its challenge on 15 October 2012 but that is not relevant evidence in support of an application for rehearing which is made long out of time.

[8] For the foregoing reasons, the application for rehearing is dismissed. Because the intended defendant has not been required to take any steps in the proceeding, there will be no order for costs on the application for rehearing.

GL Colgan
Chief Judge

Judgment signed at 2 pm on Monday 15 April 2013

[1] [2012] NZERA Christchurch 105.

[2] [2012] NZEmpC 181.

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