

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2023] NZERA 177  
3173067

BETWEEN	DAVID THOMSON Applicant
AND	WASTE MANAGEMENT NZ LIMITED Respondent

Member of Authority:	Claire English
Representatives:	No appearance for the Applicant Fiona Dalziel, counsel for the Respondent
Investigation Meeting:	13 April 2023 at Wellington
Submissions received:	None 13 April 2023 from Respondent
Determination:	14 April 2023

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] The applicant, Mr David Thomson, filed an application raising personal grievance claims of unjustified disadvantage, unjustified dismissal, and a breach of good faith against the respondent.

[2] The respondent denied these claims.

[3] A case management conference call was held with the parties. Both parties were represented by counsel. At this call, the issues for investigation by the Authority were identified as set out above. An investigation meeting was set down for 13 April 2023

in Wellington, with the agreement of both parties. Timetabling orders for the provision of amended pleadings, witness statements and other documents by both parties were also made.

[4] A copy of these timetabling directions, as well as a notice of hearing, was sent to both parties. Counsel acting for Mr Thompson at that time confirmed to the Authority that Mr Thomson had been provided with both these documents.

[5] Mr Thomson did not file any evidence, or any of the other documents provided for in the timetabling directions. The file shows that the Authority Officer responsible for the file contacted Mr Thompson's counsel to remind him of the timetabling directions. Counsel for Mr Thompson advised that they had received no instructions from Mr Thompson to file any documents with the Authority, they were no longer acting for him, and they had received no contact from him about any such matters.

[6] The Authority Officer has emailed Mr Thompson at the personal email address provided, both to remind him of the timetabling dates for the filing of evidence, and to advise him that if he did not attend the scheduled investigation meeting, it was possible that the matter would be dismissed. No response has been received of any kind.

[7] Counsel for the respondent has also advised that they have received no contact from Mr Thompson.

[8] Both parties were sent a Notice of Hearing, setting out (among other things) the date, time, and venue for the investigation meeting. Despite this, Mr Thompson failed to attend the investigation meeting on 13 April 2023, even though ample time was allowed in case of lateness. Counsel for the respondent did attend, and in Mr Thomson's absence, submitted that the matter should be dismissed, and costs reserved.

### **The Authority's investigation**

[9] 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.

[10] I am satisfied that Mr Thomson was aware of the scheduled investigation meeting, as he was represented at the case management conference where the date and

venue for the investigation meeting were set, and his counsel actively participated in setting that date. I am also satisfied that he received the notice of hearing confirming this, which was sent both to his then-representative, and was confirmed to him later via emails as noted above.

[11] Contained in the notice of investigation meeting, which I am satisfied Mr Thomson has received, is advice that if the applicant does not attend the investigation meeting the matter may be dismissed.<sup>1</sup>

[12] Given that, the absence of either notification or explanation of Mr Thomson's absence, along with his failure to respond to multiple approaches from the Authority, I conclude it appropriate I apply the regulations and dismiss the application for lack of prosecution.

### **Orders**

[13] For the above reasons, I dismiss Mr Thompson's application.

### **Costs**

[14] I am satisfied that Mr Thompson was put on notice that, in the event that he did not attend the investigation meeting, costs might be awarded against him<sup>2</sup>. Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[15] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>3</sup>

Claire English  
Member of the Employment Relations Authority

---

<sup>1</sup> Note 1 to Form 8 of the Employment Relations Authority Regulations 2000.

<sup>2</sup> See also Note 1 to Form 8 of the Employment Relations Authority Regulations 2000, as well as the advice contained in the Authority's timetabling directions.

<sup>3</sup> Please note the Authority's Practice Note on costs, effective from 2 May, available at <https://www.era.govt.nz/assets/Uploads/practice-note-2>