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Ward v Concrete Structures (NZ) Limited (Auckland) [2018] NZERA 285; [2018] NZERA Auckland 285 (11 September 2018)

Last Updated: 19 September 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2018] NZERA Auckland 285
3028353

BETWEEN SAM WARD Applicant

AND CONCRETE STRUCTURES (NZ) LIMITED

Respondent

Member of Authority: Jenni-Maree Trotman

Representatives: Greg Bennett, Advocate for the Applicant

Kevin Badcock, Counsel for the Respondent

Investigation Meeting: On the papers

Additional documents received:

03 September 2018, from Respondent

None from Applicant

Determination: 11 September 2018

PRELIMINARY DETERMINATION OF THE AUTHORITY

Orders

A. Concrete Structures (NZ) Limited's application for security for costs is dismissed.

Employment Relationship Problem

[1] Sam Ward was employed by Concrete Structures (NZ) Limited on 17

February 2004. He claims that on 11 November 2016 he was unjustifiably dismissed. Concrete Structures denies unjustifiably dismissing Mr Ward. The investigation of this dispute will be investigated by the Authority separately.

[2] Concrete Structures has applied for an order for security for costs. The grounds upon which Concrete Structures applies are, in summary, these:

a) Concrete Structures has been put to significant increased and unnecessary costs as a result of Mr Ward's, and his advocate's, actions during the period 29 May 2018 to 23 August 2018.

b) Mr Ward will be unable to pay Concrete Structures' costs if his application fails.

c) Mr Ward's claim has little prospect of success.

[3] Mr Ward was provided with an opportunity to respond to Concrete Structure’s application for security for costs. He has not done so. As provided for in clause 12 of Schedule 2 of the Act I have proceeded to act as fully in the matter before me as if Mr Ward had appeared.

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

Issues

[5] The issues to be determined are:

(a) Does the Authority have jurisdiction to order security for costs?

(b) Should security for costs be ordered in the circumstances of this case?

Issue One: Does the Authority have jurisdiction to order security for costs?

[6] The power to award costs in the Authority is contained in clause 15, schedule

2, of the Act. This power allows the Authority to order any party to pay to any other party costs and expenses. However, it does not expressly allow the Authority to order security for payment of costs.

[7] In *Milne v Air New Zealand*¹ and subsequently in *South Pacific Limited v*

*Tian*² Judge Inglis held:

There is no express provision in the [Employment Relations Act 2000](#) (“the Act”) to order security of costs. However, it has been accepted in numerous

1 [\[2013\] NZEmpC 108](#).

2 [\[2013\] NZEmpC 214](#) at [\[4\]](#).

cases that **the Employment Court has the power** to make such an order and to stay any proceedings until security is given. (Emphasis added).

[8] Judge Inglis’ conclusion mirrored that of the Employment Court in *Reid v NZ Fire Service Commission* where the Court held: 3

A power to order security of costs is not only unnecessary but contrary to the core function of the tribunal to provide speedy, fair and just resolution of differences.

[9] In the absence of express provisions in the Act, I confirm my preliminary indication provided to the parties that the Authority has no jurisdiction to order security of costs to Concrete Structures.

[10] Concrete Structures’ application for security of costs is dismissed.

Jenni-Maree Trotman

Member of the Employment Relations Authority

3 [\[1996\] NZEmpC 63](#); [\[1996\] 1 ERNZ 228](#) at p.246.