



Employment Court of New Zealand

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Whaanga v Sharp Service Limited [2014] NZEmpC 59 (29 April 2014)

Last Updated: 2 May 2014

IN THE EMPLOYMENT COURT AUCKLAND

[\[2014\] NZEmpC 59](#)

ARC 69/13

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

AND IN THE MATTER of an interlocutory application to strike out briefs of evidence

BETWEEN PHILLIPA WHAANGA Plaintiff

AND SHARP SERVICES LIMITED Defendant

Hearing: Following a telephone conference held at 3pm on 29 April 2014

Appearances: Mr Bennett, advocate for plaintiff

Mr Keating, counsel for defendant

Judgment: 29 April 2014

INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] The plaintiff has applied for orders striking out the briefs of evidence filed on behalf of the defendant in these proceedings. The orders are sought on the basis of delay. Although the proceedings are set down for a two day hearing commencing on Monday 5 May 2014, the defendant's briefs of evidence were only filed and served yesterday. According to the timetabling orders made as long ago as November 2013 the briefs were due to be filed and served at least three weeks prior to the hearing.

[2] Mr Bennett, advocate for the plaintiff, says that the late filing amounts to an abuse of process and may cause prejudice or embarrassment to the plaintiff. The defendant opposes the application.

[3] An urgent telephone conference was convened this afternoon, the parties agreeing that the application could be dealt with after hearing from the parties' representatives. I dismissed the application and indicated that my reasons would follow.

[4] Mr Keating says that a number of factors contributed to the late filing. He was involved in a traffic accident and was off work for a period of time, only returning full time in mid-April. Additionally, his client confronted personal circumstances which distracted them and he has only recently been able to obtain instructions. None of this was conveyed to the Court or Mr Bennett. As Mr Keating accepts, the appropriate course would have been to apply for an extension of the timetabling orders in a timely manner. It is regrettable, to say the least, that no steps were taken despite reminders from both Registry staff and Mr Bennett's office.

[5] The potential prejudice that Mr Bennett refers to primarily relates to his client's inability to comply with the timeframe for filing briefs of evidence in reply. According to the orders previously made this was meant to occur one week before the hearing. Obviously that timetable could not be complied with as the defendant's briefs had not been made available. As discussed during the course of the conference call, this issue can be addressed by extending the time for filing or, if that does not prove possible, the plaintiff may give evidence in reply orally at the hearing. Mr Keating was not adverse to such a

course.

[6] I understood the plaintiff's application to simply be focussed on striking out the defendant's written briefs rather than preventing the defendant's witnesses from giving evidence at hearing. In this sense the orders (if made) would have little practical effect and would not address the potential prejudice that the plaintiff has identified. Issues of increased costs, if they can be substantiated, can be dealt with by way of an order for costs. Mr Bennett did not seek an adjournment. Both representatives confirmed that the hearing could proceed next week.

[7] In the circumstances I declined the application having regard to the matters identified on behalf of each party, extended the timeframe for filing any briefs of evidence in reply by the plaintiff to 5 pm this Friday 2 May 2014 and directed that if the plaintiff was unable to meet this timeframe any evidence in reply could be given orally at the hearing.

[8] Costs on the application were reserved.

Christina Inglis

Judge

Judgment signed at 4.30 pm on 29 April 2014

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