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Zonneveld (Labour Inspector) v Maudaara Limited [2015] NZEmpC 155 (10 September 2015)

Last Updated: 16 September 2015

IN THE EMPLOYMENT COURT CHRISTCHURCH

[\[2015\] NZEmpC 155](#)

EMPC 238/2015

IN THE MATTER OF an application for leave to file a challenge out of time

BETWEEN BRIDGET ZONNEVELD (LABOUR INSPECTOR)

Applicant

AND MAUDAARA LIMITED Respondent

Hearing: (on the papers filed 7 September 2015) Counsel: A McIlroy, counsel for the applicant

Judgment: 10 September 2015

INTERLOCUTORY JUDGMENT OF JUDGE B A CORKILL

[1] The issue which I must consider in this case is whether leave should be granted to the applicant to file a statement of claim. The statement of claim should have been filed by 14 August 2015, but an attempt to do so was not undertaken until three days later.

[2] The application for leave has been served on Maudaara Limited; it has taken no steps to oppose the application.

[3] The proposed challenge relates to a determination of the Employment

Relations Authority (the Authority) dated 17 July 2015.¹

[4] The applicant had requested the Authority to conclude that the respondent employer had exacted a premium from one of its employees, so that a penalty should

¹ *Zonneveld v Maudaara Ltd* [2015] NZERA Christchurch 99.

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be imposed. The Authority found that there was insufficient evidence to reach such a conclusion, and declined to determine that a premium had been sought or paid; consequently no question of penalties in respect of that issue arose.²

[5] The second allegation considered by the Authority was that the respondent owed arrears of wages pursuant to the [Minimum Wage Act 1983](#) and arrears of wages pursuant to provisions of the [Holidays Act 2003](#). The respondent conceded this had occurred, and the Authority recorded that a repayment schedule had been agreed and adhered to. At the investigation meeting, an extension of time for complying with the repayment of monies owed was granted, it being concluded that the employer was in financial difficulty. Leave was reserved for the Labour

Inspector to revert to the Authority for further orders in the event of any default.³

[6] Next, the applicant alleged there had been a failure to maintain wage and time records and holiday leave records. Again the employer conceded it had not fulfilled its obligations, but confirmed it had taken remedial steps to deal with the default

by engaging a contractor to undertake the necessary work. Leave was reserved for the Labour Inspector to revert to the Authority for orders in the event that she was not satisfied that full compliance had been achieved.⁴

[7] The Authority was then required to consider an application for penalties in respect of the two breaches just summarised. It was determined that a starting point for a global penalty in respect of a failure to pay minimum wages and holiday pay was \$15,000;⁵ and a starting point for a failure to keep proper records was a global

penalty of \$10,000.⁶

[8] The Authority, however, declined to make any orders providing the employer fulfilled its obligations. The Authority concluded that if the Labour Inspector was prepared subsequently to certify that compliance had been achieved, the Authority Member would close his file without issuing any further orders. Conversely, if

obligations were not fulfilled to the satisfaction of the Labour Inspector, the

² At [38] - [39].

³ At [42].

⁴ At [44].

⁵ At [50].

⁶ At [52].

employer could expect the Authority to levy the stated penalties on further application by the applicant.⁷

[9] From the draft statement of claim it is apparent the applicant will seek orders that the employer be ordered to pay the penalties which were specified by the Authority.

[10] The applicant, in her statement of claim, also states that a hearing de novo is sought, although on the face of it only the issue identified relates to the payment of penalties. That is a matter that will need to be clarified by the applicant.

[11] The grounds on which the application for leave is sought can be briefly summarised. The lawyer who dealt with the conduct of the matter in the Authority was employed by the Ministry of Business, Innovation and Employment (MBIE). She finished working for MBIE on 15 July 2015, shortly before the Authority's determination was received. Subsequently, the Manager who assumed responsibility for filing a challenge erred in her calculation as to the due date of filing for a statement of claim raising a challenge. She assumed it would be 17 August 2015, rather than 14 August 2015. The miscalculation was due to a misunderstanding as to the date of expiry of the period within which the document needed to be lodged.

[12] The Court's jurisdiction to extend time in circumstances such as the present is conferred by [s 219\(1\)](#) of the [Employment Relations Act 2000](#) (the Act). It confers a discretion which must be exercised judicially and in accordance with established principles. These include consideration of such factors as the reason for the omission to bring the case within time, the length of the delay, any prejudice or hardship to any person, the effect on the rights and liabilities of the parties,

subsequent events, and the merits of the proposed challenge.⁸

[13] Delay has been occasioned by an inadvertent misunderstanding as to the calculation of time; the length of the delay is minimal; there is no evidence of any

prejudice or hardship to the respondent, and there is a bona fide issue for resolution

⁷ At [55] and [56].

⁸ *Day v Whitcoulls Group Ltd* [1997] NZEmpC 152; [1997] ERNZ 541 at 548, and *Stevenson v Hato Paora College Trust Board* [2002] NZEmpC 39; [2002] 2 ERNZ 103 at [8].

in the challenge. The applicant's lawyer moved to address the default as soon as it

was raised with her by the Registrar.

[14] I consider leave should be granted; my view that this is the appropriate course is reinforced by the fact that the application is not opposed.

[15] I grant leave to the applicant to file her statement of claim within seven days of the date of this judgment, paying the requisite fee for doing so.

[16] There will be no order as to costs.

Judgment signed at 12.30 pm on 10 September 2015

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