

IN THE COURT OF APPEAL OF NEW ZEALAND

**CA209/2016
[2016] NZCA 372**

BETWEEN

**YASODHARA DE SILVEIRA
SCARBOROUGH
Applicant**

AND

**MICRON SECURITY PRODUCTS LTD
Respondent**

Hearing: 1 August 2016
Court: Kós P, Winkelmann and Cooper JJ
Counsel: Applicant in person
D J France and S Worthy for Respondent
Judgment: 11 August 2016 at 10 am

JUDGMENT OF THE COURT

- A The application for extension of time is dismissed.**
- B Ms Scarborough must pay Micron costs for a standard application on a band A basis together with usual disbursements.**
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REASONS OF THE COURT

(Given by Kós P)

[1] Mrs Scarborough applies for extension of time to seek leave to appeal against a decision of the Employment Court.¹ It is the second application made by Ms Scarborough in this Court in recent times. Our earlier decision, refusing leave to

¹ *Scarborough v Micron Security Products Ltd* [2015] NZEmpC 39.

appeal two costs decisions of the Employment Court, sets out the background sufficiently.²

[2] The basis for the present application for extension of time is that Ms Scarbrough, self-represented, mistakenly appealed the costs judgments, rather than the substantive judgment. And that the substantive judgment is unsatisfactory, giving rise to meritorious questions of law.

[3] We are not satisfied that Ms Scarborough has adequately explained her lengthy delay. Her application was filed more than a year after the date of the substantive judgment below. We do not accept Ms Scarborough was confused as to which judgment to appeal. In any event, our judgment in refusing leave to appeal against the costs decisions was delivered on 9 March 2016, yet the present application still was not filed for another two months.

[4] Furthermore, we do not consider that the questions of law proposed are ones which are of reason of general or public importance for other reason ought to be submitted to this Court. In short, they are either factual in nature or devoid of merit.

[5] The first question proposed is whether Micron erred in not fulfilling its statutory good faith obligations. That was however the conclusion in both the Employment Relations Authority and the Employment Court. The question is now moot.

[6] The second suggested question is whether Micron breached a WINZ employment subsidy agreement. We do not consider that question relevant to the ultimate issues before the Authority and Court below. These were whether the redundancy was substantively justified (it being found that it was) and whether Micron had complied with its procedural obligations (it being found that it had not). In any event, we consider it to be fundamentally a question of fact rather than law.

[7] The third question proposed is whether Micron erred in not reinstating Ms Scarborough or paying her lost remuneration. This is an intensely factual

² *Scarborough v Micron Security Products Ltd* [2016] NZCA 54.

question. Ms Scarborough was invited by the Authority to produce evidence of financial loss, but did not. And any prospect of reinstatement was impossible given allegations Ms Scarborough had made against the managing director of Micron.

Result

[8] The application for extension of time is dismissed.

[9] Ms Scarborough must pay Micron costs for a standard application on a band A basis together with usual disbursements.

Solicitors:
Kiely Thompson Caisley, Auckland for Respondents