

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2012] NZEmpC 85
ARC 42/11**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

BETWEEN VIPULKUMAR PATEL
Plaintiff

AND PEGASUS STATIONS LTD
Defendant

Hearing: By memoranda of the defendant on 30 May 2012 and of the plaintiff
on 14 May 2012

Judgment: 31 May 2012

INTERLOCUTORY JUDGMENT OF JUDGE B S TRAVIS

[1] The plaintiff (Mr Patel) has filed a memorandum on 14 May 2012 in which he states there has been no cross-challenge issued by the defendant (Pegasus Stations Ltd) against his statement of claim in the statement of defence dated 7 December 2011. He seeks a “hearing in favour of the plaintiff without any direction conference and without delay”.

[2] Although it does not include a cross-challenge, the statement of defence puts in issue all the matters claimed by the plaintiff in his amended statement of claim filed on 28 October 2011. The plaintiff’s de novo challenge is a defended matter and therefore requires a directions conference and the allocation of a fixture to deal with it.

[3] If the plaintiff’s application amounted to a request for judgment by default it must therefore be dismissed.

[4] The defendant has filed a memorandum accepting the plaintiff's request that the directions conference take place with the plaintiff, in person, in chambers at the Court with the defendant being present by way of teleconferencing.

[5] As counsel and those instructing her, reside in Wellington they are unwilling to incur the cost of appearing in person at a directions conference.

[6] Although the Registrar has indicated that the Court has limited availability for a chambers hearing on 5 and 6 June, I am concerned that outstanding issues of disclosure may provide an impediment to the granting of a hearing date.

[7] Until Mr Patel responds to the defendant's request that he provide all documents he intends to rely on in support of his case, and Mr Patel has advised in writing that he is satisfied that he has all the documents he now requires from the defendant, I do not consider that the matter should be allocated a directions conference.

[8] Once the parties are able to advise the Court that all outstanding matters in relation to disclosure are completed, a directions conference can be allocated at which time a hearing date for the defended hearing will be set.

[9] I note that an exchange of memoranda has resulted in Court minutes. These have recorded the directions for the defended hearing and my view that the use of mediation would not contribute constructively to resolving this matter. Consequently I have not made a direction under s 188(2)(c) directing the parties to use mediation.

B S Travis
Judge

Judgment signed at 4.45pm on 31 May 2012