

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2013] NZEmpC 164  
ARC 68/12**

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

BETWEEN                ELAINE MANDER  
Plaintiff

AND                        IHC NEW ZEALAND INCORPORATED  
Defendant

Judgment:                4 September 2013

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**JUDGMENT OF CHIEF JUDGE G L COLGAN**

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[1]      The plaintiff's challenge to the determination of the Employment Relations Authority issued on 11 September 2012 is dismissed in the following circumstances.<sup>1</sup>

[2]      The plaintiff's statement of claim was filed on 9 October 2012. At that time Ms Mander asked that her challenge not be progressed because she had then requested the Authority to reopen its investigation meeting.

[3]      On 5 February 2013 the plaintiff advised the Registrar that she did not wish to continue with her challenge and was told that she would need to withdraw the matter formally. A template notice to this effect was sent by post and email to the plaintiff on different occasions in February, March and May 2013, and numerous telephone messages were left on her land line and cell phone numbers but without response.

[4]      On 25 June 2013 I recorded formally in a Minute that although the plaintiff's advice to the Registrar on 5 February 2013 that she did not wish to continue with the challenge may have constituted a withdrawal of the proceedings under cl 18 of Schedule 3 to the Employment Relations Act 2000, I nevertheless offered her an

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<sup>1</sup> [2012] NZERA Auckland 317.

opportunity to formally confirm either that the challenge was going to be withdrawn or that she wished to continue with it. The plaintiff was advised that if she did not take any step consistent with the proceedings' continued prosecution within the period of 14 days of the date of that Minute (which I directed be served at her residential address for service in Rotorua and sent by email to her email address), the challenge would be dismissed for want of prosecution.

[5] On 26 June 2013 the plaintiff advised the Registrar by email of a family bereavement and, in these circumstances, and by a further Minute issued on 27 June 2013, the time within which she was to take any further steps was extended from 14 to 42 days.

[6] By 7 August 2013 the plaintiff had not taken any further steps. A further Minute was issued and sent to her, the last paragraph of which recorded:

In view of the plaintiff's advice to the Registrar by email of 26 June 2013 about the circumstances in which she was then unable to give this matter her attention, I will not dismiss the challenge for its non-prosecution by the plaintiff if, within the next 14 days, she complies with the Court's directions. The plaintiff must be on clear notice, however, that if there is no further compliance at that time, the challenge will be dismissed.

[7] The Registrar's advice is that the Court's 7 August 2013 Minute was emailed and posted to the plaintiff at her address for service. Nothing further has been heard from the plaintiff either before or since 21 August 2013.

[8] In these circumstances, and in fairness to the defendant, the plaintiff's challenge is dismissed. Costs are reserved.

GL Colgan  
Chief Judge

Judgment signed at 8.30 am on Wednesday 4 September 2013