

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2013] NZEmpC 216
ARC 32/13**

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

AND IN THE MATTER of an application for leave to file amended
statement of defence out of time

BETWEEN MADHUKAR SHYAM NARAYAN
Plaintiff

AND TELECOM NEW ZEALAND LIMITED
Defendant

Hearing: On documents filed on 23 October and 12 and 22 November
2013

Representatives: Plaintiff in person
Emma Butcher, counsel for defendant

Judgment: 27 November 2013

INTERLOCUTORY JUDGMENT OF JUDGE M E PERKINS

[1] This matter involves a challenge to a determination of the Employment Relations Authority dated 1 May 2013.¹ The matter is ready to be set down for hearing and a two day fixture will be allocated in the new year.

[2] On 30 September 2013, by telephone directions conference, Mr Narayan indicated that he intended to also challenge the Authority's costs determination, which had recently been issued. Accordingly, I set a timetable for the filing of an amended statement of claim and the filing of an amended statement of defence. In addition, a timetable was set for the preparation, exchanging and filing of a bundle of agreed documents.

¹ [2013] NZERA Auckland 149.

[3] Mr Narayan filed his amended statement of claim within time. Unfortunately, the defendant was one day out of time in the filing of the amended statement of defence. Mr Narayan would not consent to the amended statement of defence being filed out of time. Accordingly, the defendant has applied for leave to do so. Mr Narayan opposes the granting of such leave. The parties have agreed that the application may be dealt with on the papers without the need for a court hearing.

[4] Unfortunately, what amounts to a minor procedural defect has been escalated unjustifiably by Mr Narayan.

[5] Mr Narayan, in his affidavit in support of his notice of opposition, is alleging that the actions of counsel for the defendant, in filing the amended statement of defence out of time, were deliberate and not as a result of oversight. In addition, he is alleging that he is prejudiced and that leave should not be granted. In addition, Mr Narayan has unfortunately, in his affidavit, made further accusations against counsel for the defendant and has made statements critical of the court registry staff and which appear to infer some impropriety on their part.

[6] Mr Narayan is not able to substantiate the accusations he has made. He claims, in his affidavit, to set out particulars of the prejudice he has suffered but, in fact, the particulars do not disclose any prejudice suffered by him at all.

[7] As a result of the affidavit in support of the notice of opposition, counsel for the defendant has had to arrange for the filing of a further lengthy affidavit from a member of her staff responding to the statements of Mr Narayan.

[8] I note that the application for leave relies upon reg 19 of the Employment Court Regulations 2000. However, that regulation really only applies to the filing of the initial statement of defence to the initial statement of claim commencing the proceedings. The present application is really a request to the Court to grant leave pursuant to its general jurisdiction.² While, when there is a failure to file the original statement of defence within the 30 day period prescribed in reg 19, the defendant is compelled to apply to the Court for leave, that does not apply in the present situation.

² Employment Relations Act 2000, s 221.

The present application relates to the filing of an amended statement of defence well after the proceedings have been commenced. Accordingly, this is a case where Mr Narayan could have consented, and indeed should have consented, to the amended statement of defence being filed one day late. After all, the discretion of the Court has previously been exercised in favour of Mr Narayan on procedural matters.

[9] In this judgment I do not intend to deal specifically with the matters which Mr Narayan has raised in his affidavit. Some of the matters he has raised are quite unreasonable and inappropriate. His opposition to the application for leave is unreasonable and unfounded.

[10] The defendant's application for leave to file the amended statement of defence is granted. The attachment of the proposed amended statement of defence dated 15 October 2013 to Ms McCrory's affidavit is deemed as compliance with such filing and that document will be treated as the Court's copy. Presumably, Mr Narayan has a copy.

[11] In his affidavit Mr Narayan asked the Court to direct that the hearing of this matter be in Wellington. The proceedings are filed in Auckland and, as directed in my minute of 30 September 2013, the hearing will be in Auckland.

[12] I note from the affidavits that there has been some disagreement as to the preparation and filing of the bundle of agreed documents. Hopefully, that is now resolved.

[13] The issue of costs has been raised in respect of this application. While Mr Narayan's stance on the matter has been unreasonable, I have decided to make no order for costs and costs will lie where they fall. It now remains for the Registry to allocate a fixture date.

ME Perkins
Judge

Judgment signed at 9.45 am on Wednesday 27 November 2013