

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2013] NZEmpC 41  
ARC 2/13**

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

BETWEEN                      COVERALL CLEANING CONCEPTS  
NEW ZEALAND LIMITED  
Plaintiff

AND                              MONIQUE ATKINSON  
Defendant

Hearing:      On the papers

Judgment:      20 March 2013

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**JUDGMENT OF CHIEF JUDGE G L COLGAN**

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[1]      The plaintiff's challenge is dismissed because of its failure to comply with an 'unless' order and generally for non-prosecution of the challenge.

[2]      The plaintiff filed a statement of claim and an application for stay of execution of the Authority's determination<sup>1</sup> in early January 2013. There was no affidavit filed to support the application for stay as is expected in cases such as this.

[3]      By a minute issued on 10 January 2013, I directed the plaintiff to file and serve a statement of claim which complied with reg 11 of the Employment Court Regulations 2000 within 14 days of the date of that minute. An affidavit in support of the application for stay was sought. I urged the plaintiff to take professional advice about its position. None of these directions was complied with by the plaintiff and the Court's recommendation about taking professional advice was not taken up.

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<sup>1</sup> [2012] NZERA Auckland 447.

[4] The file was referred to me again by the Registrar on 21 February 2013 and on that date I issued a further minute. I noted that there was still no affidavit evidence in support of the application for stay so that it had not been progressed by the Court. I also noted that there was no indication that the plaintiff had served the defendant with any of the proceedings as I had directed on 10 January 2013. I concluded that the plaintiff's amended statement of claim, which was filed on 1 February 2013, still did not meet the minimum requirements of reg 11. I urged the plaintiff again to take steps very promptly to address those matters.

[5] The 'unless' order made at para 6 of that minute was as follows:

Unless the plaintiff files a further amended statement of claim that complies with reg 11, takes steps to serve this on the defendant, and files an affidavit in support of its application for stay of execution of the Authority's determination **within 21 days of today's date**, the challenge will be dismissed without more.

[6] The Registry has now advised me that none of these steps has been complied with. In addition, the Registry has been in touch with the defendant's advocate in the proceeding who advised that no documents have been served on him and no contact has been made with him to require that he accept service on his client's behalf.

[7] In these circumstances, the plaintiff's challenge is dismissed.

[8] For completeness, I confirm that there is no restriction upon the defendant now seeking to enforce the awards made by the Authority. Although I do not imagine there will be, if there are any issues of costs on this challenge, the advocate for the defendant may have the period of 10 working days from the date of this judgment to apply by memorandum.

GL Colgan  
Chief Judge

Judgment signed at 3.15 pm on Wednesday 20 March 2013