

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**AC 35/09  
ARC 15/09**

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

BETWEEN                LUCY ORA HAMON  
                                  Plaintiff

AND                       COROMANDEL INDEPENDENT  
                                  LIVING TRUST  
                                  Defendant

Hearing:                By memoranda of submissions filed on 10 and 24 August 2009

Judgment:             2 October 2009

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**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE GL COLGAN**

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[1]     The Court, having called for a report from the Employment Relations Authority under s181 of the Employment Relations Act 2000 (“the Act”), must now determine whether it is satisfied, on the basis of the Authority’s report and the submissions of the parties, that the plaintiff participated in the Authority’s investigation of the matter in a manner that was designed to resolve the issues involved.

[2]     This was clearly a difficult, even fraught, investigation of Lucy Hamon’s personal grievance in the Employment Relations Authority. Although Ms Hamon alleged that she had been dismissed constructively and unjustifiably, a very broad range of issues was raised by both parties and disposed of by the Authority either in directions in the course of its investigation or by its determination dismissing Ms Hamon’s grievance.

[3] The Authority concluded, in its report to the Court, that whilst the Coromandel Independent Living Trust (“the Trust”) attempted without justification to introduce prejudicial material to the investigation, this was not such an unusual feature of litigation that it could not deal with it. The Authority’s assessment of the employer’s conduct was that it did not amount to a participation in the investigation in a manner that was not designed to resolve the issues involved. I infer that the Authority has concluded that the employer facilitated rather than obstructed its investigation and that it acted in good faith towards Ms Hamon during the investigation.

[4] At paragraph [51] the Authority has, however, concluded that certain of Ms Hamon’s actions (including those of her advocate) obstructed rather than facilitated its investigation. This conclusion was based on difficulties the Authority had in getting produced a USB drive and a tape recording of a meeting which it concluded were not given to it in usable form. The Authority appears to have attributed to Ms Hamon’s advocate a high standard of responsibility in relation to evidence because of his former occupations of solicitor and police officer.

[5] Ms Hamon has elected to challenge the Authority’s determination by hearing *de novo*. The consequence of upholding the Authority’s assessment can only be to constrain the nature and extent of the hearing of the challenge.

[6] As Ms Hamon has submitted, however, her failures in respect of the USB drive and the tape affected her own claims and did not impact on the Trust’s defence. As the plaintiff has said, the defendant’s evidence that Ms Hamon hoped would be impeached by the contents of those devices was accepted by the Authority.

[7] This is not a case of failure to participate in an Authority investigation. Albeit problematically, Ms Hamon did participate and I do not think it can be said that the conduct of the defendant’s case was without blemish as indeed the Authority has concluded. The failings on Ms Hamon’s part ought more properly to be reflected in costs rather than to circumscribe significantly the nature of her challenge so that the merits of her claim cannot be determined as the legislation presumes they will be by the challenge procedure.

[8] In these circumstances I have concluded that it would be inappropriate for the Court to now constrain the nature and extent of the hearing under s182 of the Act.

[9] The defendant must file and serve its statement of defence to the amended statement of claim within 21 days of the date of this interlocutory judgment and the Registrar should then arrange for the challenge to be called over in the usual way.

GL Colgan  
Chief Judge

Judgment signed at 8.30 am on Friday 2 October 2009