

**IN THE EMPLOYMENT COURT  
WELLINGTON**

**[2014] NZEmpC 148  
WRC 14/14**

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 a  
challenge out of time

BETWEEN IRITANA HOROWAI NGAWHARAU  
Plaintiff

AND THE PORIRUA WHANAU CENTRE  
TRUST  
Defendant

Hearing: (on the papers by memoranda dated 5 August and 7 August  
2014)

Representation: B Paradza, advocate for the plaintiff  
A J Knowsley, counsel for the defendant

Judgment: 14 August 2014

---

**INTERLOCUTORY JUDGMENT OF JUDGE A D FORD**

---

[1] The plaintiff, Mr Ngawharau, was initially represented in this proceeding by a lay-person, Mr C Moses. The statement of claim Mr Moses filed was defective. In the course of a telephone directions conference on 8 July 2014, Mr Moses informed the Court that Mr Ngawharau was in the process of engaging legal counsel to represent him. On the same day, I issued a minute confirming that advice and I directed that Mr Ngawharau was to file an amended statement of claim that complied with the Employment Court Regulations 2000 by Tuesday, 5 August 2014.

[2] On 5 August 2014, Mr Moses filed an application seeking a one-week extension of time for filing the amended statement of claim. On 8 August 2014, Mr A Knowsley, counsel for the defendant, filed a statement of opposition to the

granting of any extension of time. This brief interlocutory judgment deals with the application for a one-week extension of time.

[3] The grounds for the application advanced by Mr Moses were:

1. Recent ill-health
2. Current heavy workload (unrelated to employment advocacy issues)
3. Recent acquisition of an advocate and eventual change of representative.

[4] On 6 August 2014, a notice of change of representation and address for service was filed which confirmed that Mr B Paradza is now acting for the plaintiff in the proceeding. Mr Paradza advised the Registrar that he had nothing to add to Mr Moses' application.

[5] The thrust of Mr Knowsley's opposition to the extension of time application was that Mr Ngawharau left it until 5 August 2014, which was the day the amended statement of claim was due to be filed, before he engaged Mr Paradza in the matter and there was no adequate evidence before the Court to explain the failure to engage counsel in good time to comply with the Court order. Mr Knowsley alleged that Mr Ngawharau and Mr Moses similarly failed to comply with timetable orders issued by the Employment Relations Authority (the Authority) in its investigation and "they appear to have adopted the position that they do not have to comply with directions issued by the Authority or the Court". Some examples were provided.

[6] These are serious allegations. Normally when the Court is faced with a claim that a litigant has not cooperated with the Authority's investigation, it will request what is known as a good faith report pursuant to s 181(1) of the Employment Relations Act 2000 (the Act). Section 181(2) of the Act, however, provides that the Court may request a Good Faith Report only where it is apparent from the Authority's determination that a party may not have participated in the Authority's investigation in a manner that was designed to resolve the issues involved.

[7] In the present case, there is no indication in the Authority's determination that Mr Ngawharau failed to cooperate in any way with the Authority in its investigation of the matter.<sup>1</sup> In these circumstances, I am unable to request a good faith report.

[8] I am satisfied that the application should be granted. Given the interruption to the timetable resulting from the application before me, I hereby grant Mr Paradza an extension of time in which to file an amended statement of claim. The amended claim is to be filed and served within seven (7) days of the date of this judgment.

A D Ford  
Judge

Judgment signed at 9.55 am on 14 August 2014

---

<sup>1</sup> *Ngawharau v Porirua Whanau Centre Trust* [2014] NZERA Wellington 34.