

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH**

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2019] NZEmpC 39
EMPC 250/2017**

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

AND IN THE MATTER of an application to strike out part of the
proceedings

BETWEEN GEORGINA RACHELLE
Plaintiff

AND AIR NEW ZEALAND LIMITED
Defendant

Hearing: On the papers

Appearances: G Rachelle, plaintiff in person
P Caisley, counsel for defendant

Judgment: 4 April 2019

**INTERLOCUTORY JUDGMENT (NO 5) OF JUDGE K G SMITH
(Application to strike out part of the proceeding)**

[1] On 5 March 2019 an interlocutory judgment was released dealing with an application by Air New Zealand Ltd seeking to strike out parts of Ms Rachelle’s fifth amended statement of claim.¹

[2] The application was partly successful and Ms Rachelle’s pleading that Air NZ had breached “privacy law” was struck out. Air NZ’s application also sought to strike out a pleading that Ms Rachelle had been unlawfully dismissed, made in paragraph

¹ *Rachelle v Air New Zealand Ltd (No 4)* [2019] NZEmpC 23.

[1](a)(5) of the statement of claim. This pleading was of “unlawful dismissal” (understood to mean unjustified dismissal) amplified in further particulars as follows:

Unlawful dismissal

Wrongfully accused of swearing at a pilot as a result, the plaintiff Ms Rachelle’s financial income has been lost as well as her career and future employment prospects. Please refer to **dated** Appendix 4. (*Mr Naoto Unno, Ms Christina Guthrie, Mr Jeremy Holman (22nd Dec 2015-2016)*)

(emphasis original)

[3] It was common ground between the parties that the alleged swearing in the pleaded incident was mentioned to Ms Rachelle at a meeting on 22 December 2015.²

[4] The basis of Air NZ’s application was that Ms Rachelle had not raised a personal grievance about this incident in a way complying with s 114 of the Employment Relations Act 2000 (the Act). That section required a personal grievance to be raised within 90 days beginning with the date on which the action alleged to amount to the grievance occurred or came to the notice of the employee whichever is the latter. There is a proviso to that section. An employer may consent to a personal grievance being raised after that time period has expired.

[5] The March judgment decided that, if the pleading in the statement of claim was confined to events of 22 December 2015, it was out of time. Ms Rachelle had not attempted to raise a personal grievance until August 2016, well beyond the time allowed and Air NZ had not consented to that happening.³ The decision recognised that the pleading may actually have been attempting to pursue a claim based on a personal grievance of unjustified dismissal, not confined to the alleged swearing incident. That was because Ms Rachelle’s former lawyer had written to Air NZ following the termination of her employment disputing the company’s contention that her employment was casual and claiming that the dismissal was procedurally and substantively unjustified. The judgment allowed for the possibility that what may have been referred to was a wider allegation consistent with her lawyer’s letter.⁴

² At [29].

³ At [32].

⁴ At [32] and [33].

[6] The March judgment held that if the pleading was confined to what happened in December 2015 it would be struck out. An opportunity was provided to Ms Rachelle to file an amended statement of claim clarifying the pleading that she was unjustifiably dismissed. Twenty working days were allowed for such a step to be taken. The judgment recorded that if an amended pleading was not filed an order dealing with this part of Air NZ's application would be made without the need for a further application.⁵

[7] The time provided for Ms Rachelle to file an amended statement of claim has elapsed. She has not filed an amended proceeding and has given no indication that she intends to do so.

Conclusion

[8] Paragraph [1](a)(5) of the fifth amended statement of claim is struck out.

[9] Costs are reserved.

K G Smith
Judge

Judgment signed at 9.00 am on 4 April 2019

⁵ At [37].