IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA3/2020
[2020] NZCA 266

BETWEEN	GEORGINA RACHELLE Applicant
AND	AIR NEW ZEALAND LIMITED Respondent

Court:	French and Clifford JJ
Counsel:	Applicant in person P A Caisley for Respondent
Judgment: (On the papers)	29 June 2020 at 2.30 pm

JUDGMENT OF THE COURT

A The application for leave to appeal is declined.

B The applicant is to pay costs to the respondent for a standard application on a band A basis and usual disbursements.

REASONS OF THE COURT

(Given by Clifford J)

Introduction

[1] In December 2019 the Employment Court dismissed personal grievance claims made by the applicant, Georgina Rachelle, against the respondent, Air New Zealand Ltd.[1] Ms Rachelle now applies pursuant to s 214 of the Employment Relations Act

[1] *Rachelle v Air New Zealand Ltd* [2019] NZEmpC 191.

2000 (the Act) for leave to appeal that decision as being wrong in law. We may grant leave if the question of law proposed is one that, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.[2]

Background

[2] Between May and September 2014, Ms Rachelle worked in Queenstown for Mt Cook Airline Ltd, a wholly owned subsidiary of Air New Zealand Ltd, as a customer service agent. Ms Rachelle was what was called a "winter temp": that is, a person employed on a fixed term contract over the winter to meet additional seasonal demand.

[3] When that fixed term contract expired, Mt Cook placed Ms Rachelle's name on a list of people to whom it might offer work from time to time, "as and when required" but on the explicit basis there was no guarantee that any offer of work would, in fact, be made. As matters transpired it appears that work was offered from time to time.

[4] In December 2015 Ms Rachelle unsuccessfully applied for permanent employment with Air New Zealand. She was told she had been unsuccessful in a meeting with a representative of Air New Zealand on 22 December 2015. The reasons for that decision were not given to her at the time, but were summarised in an email sent to her on 29 April 2016. Those reasons were:

(a) about her team work, specifically regarding her comments to the effect that "everyone else was hopeless and doing a terrible job", and that she could not understand why they were employed; and

(b) that she was quick to react in a negative way and needed to consider how she came across and interacted in some situations.

---

[2] Employment Relations Act 2000, s 214(3).

[5] The Employment Court judgment records that the last time Ms Rachelle worked for Mt Cook was on 20 February 2016.[3] Two days later she sent a text message to Mt Cook advising she would not be available for work until April 2016. Mt Cook did not request Ms Rachelle to work for it after that date.

[6] On 4 April 2016, Air New Zealand took over direct responsibility for the ground handling work at Queenstown that had previously been the responsibility of its subsidiary, Mt Cook. It wrote to employees advising that Mt Cook would not be providing further casual work. Permanent employees would be transferred to Air New Zealand. Around the same time, it wrote to Ms Rachelle offering her work as a casual employee on the same basis as had previously existed between her and Mt Cook: that is, from time to time on a casual basis but with no guarantee at all that any work would, in fact, be offered.

[7] By June 2016 Air New Zealand had reassessed its need for a casual work force in Queenstown. The company wrote to Ms Rachelle on 12 June 2016 advising her of that reassessment and informing her she was not required to work in future.

[8] Following those events, Ms Rachelle brought a claim before the Employment Relations Authority against Air New Zealand, claiming that she was employed by the company and that she had been unjustifiably dismissed from her position as customer service agent at Queenstown Airport. She also claimed the company had engaged in unlawful discrimination against her by reason of her marital status, because they did not offer her a permanent position when she was in the process of getting divorced.

[9] The Authority held that Ms Rachelle did not have any personal grievance against Air New Zealand and dismissed her claims.[4]

[10] In the Employment Court, Ms Rachelle alleged personal grievances based on eight causes of action. In interlocutory proceedings Judge KG Smith struck out all but three of those: alleged harassment and bullying, breaches of workplace codes of

---

3 *Rachelle v Air New Zealand Ltd*, above n 1, at [19].
4 *Rachelle v Air New Zealand Ltd* [2017] NZERA Christchurch 140.

conduct and breaches of policies and procedures.[5] In his substantive judgment dismissing those claims the Judge found that:

(a) Ms Rachelle was not subjected to harassment and bullying by Air New Zealand or anyone employed by it.[6]

(b) Air New Zealand did not breach any of its workplace codes of conduct, policies or procedures in relation to Ms Rachelle.[7]

(c) Overall, Air New Zealand did not engage in any activity giving rise to a personal grievance by Ms Rachelle.[8]

Leave application

[11] Ms Rachelle says leave should be granted to appeal those findings because she has suffered "injustice as a New Zealand citizen".

[12] Ms Rachelle's proposed grounds of appeal are:

> Obstruction of Justice committed by Judge K G Smith.
>
> The Council [sic] not providing all defendants on the day of hearing.
>
> Being silenced in the court room and not allowed to elaborate on certain themes and events which occurred whilst in employment.

More specifically Ms Rachelle challenges the findings in paragraphs [31]–[33], [38]–[42] and [44]–[47] of the Employment Court judgment.

[13] Air New Zealand opposes the application. It says:

(a) There is no error of law or of principle in the Employment Court judgment. The Employment Court was right to dismiss the claims due to the clear factual weaknesses of Ms Rachelle's case.

---

5 *Rachelle v Air New Zealand Ltd* [2018] NZEmpC 75; *Rachelle v Air New Zealand Ltd* [2019] NZEmpC 23; and *Rachelle v Air New Zealand Ltd* [2019] NZEmpC 39.

6 *Rachelle v Air New Zealand Ltd*, above n 1, at [38].

7 At [47].

8 At [48].

(b) The hearing of Ms Rachelle's claim in the Employment Court was full and fair: she had every opportunity to present her case. The Employment Court made significant allowances for the fact that the applicant was a litigant in person.

(c) The dispute is confined to the parties and has no broader significance. There is no question of law or public importance or any other reason why the appeal should be submitted to the Court of Appeal for decision.

Analysis

[14] Ms Rachelle essentially applies for leave on the basis that she did not receive a fair hearing from Judge Smith in the Employment Court. Moreover, not only did the Judge fail to accord her a fair hearing, but Mr Caisley, counsel for Air New Zealand, had acted corruptly, as had the Judge.

[15] In her written submissions in response to Air New Zealand's opposition to this application, Ms Rachelle's position was that she "completely and utterly disagree[d]" that her hearing was full and fair, that she had every opportunity to present her case or that the Employment Court made significant allowances for the fact that she was a litigant in person.

[16] Ms Rachelle also challenges the essentially factual basis on which the Employment Court, in the specific paragraphs to which she refers, dismissed her substantive personal grievance claims against Air New Zealand.

[17] Were Ms Rachelle able to establish she had not been given a fair hearing, there would be an error of law and one of some public importance, and of particular importance to Ms Rachelle: that is, a breach of Ms Rachelle's right to natural justice affirmed by s 27 of the New Zealand Bill of Rights Act 1990. The appropriate remedy would be, as Ms Rachelle sought, a rehearing. Were she able to establish her other allegations of corruption, more than an error of law would have occurred.

[18] As to Ms Rachelle's concerns she did not receive a fair hearing, we acknowledge that the transcript shows that Judge Smith felt it necessary to intervene,

particularly when Ms Rachelle was cross-examining Air New Zealand's witnesses, more than a Judge would normally do. Having said that, however, we are also satisfied from the transcript that the interventions were proper and called for. In particular, most of the Judge's interventions were to encourage and help Ms Rachelle to put questions to the witnesses that they were in a position to answer. On other occasions, the Judge quite properly asked Ms Rachelle to desist from inappropriate comments regarding the witnesses, for example that one of them appeared to be suffering from Alzheimer's disease. We are satisfied, based on the transcript and the Employment Court decision, that an appeal on a point of law based on an absence of a fair hearing is not arguable.

[19] Beyond that, there is no evidential base for the more serious allegations Ms Rachelle made against the Judge and counsel. For the balance, Ms Rachelle is challenging essentially factual decisions of the Employment Court which raise no question of law of general or public importance.

Result

[20] We therefore decline Ms Rachelle's application for leave to bring an appeal to this Court.

[21] Costs should follow the event. Ms Rachelle is to pay costs for a standard application on a band A basis to Air New Zealand, together with usual disbursements.

Solicitors:
Kiely Thompson Caisley, Auckland for Respondent