

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2020] NZEmpC 137
EMPC 139/2020**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an objection to jurisdiction
BETWEEN	MARK SINTON Plaintiff
137 AND	COATESVILLE MOTORS 2013 LIMITED Defendant

Hearing: On the papers

Appearances: P Mathews, advocate for plaintiff
P McBride, counsel for defendant

Judgment: 2 September 2020

**INTERLOCUTORY JUDGMENT OF JUDGE KATHRYN BECK
(Objection to jurisdiction)**

[1] This is an application to determine the scope of the challenge that is before the Court.

[2] The plaintiff has filed a statement of claim challenging the whole of the determination of the Employment Relations Authority.¹

[3] In his statement of claim the plaintiff seeks that the determination of the Authority be set aside and that there be findings that:

¹ *Sinton v Coatesville Motors 2013 Ltd* [2020] NZERA 166 (Member Campbell).

- (a) He was unjustifiably disadvantaged in his employment;
- (b) he be awarded \$5,000 pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act);
- (c) the defendant be ordered to pay him \$1,750 by way of a fuel allowance;
- (d) he be awarded interest on the amount paid to him in relation to the fuel allowance; and
- (e) he be awarded costs.

[4] The aspect of the claim that is at issue is that there be a finding that he was unjustifiably disadvantaged in his employment.

[5] The defendant submits that the issue of whether or not the plaintiff was unjustifiably disadvantaged was never determined by the Authority and, therefore, cannot now be heard by the Court. Counsel submits, in effect, that it was not “the matter” that was before the Authority and is accordingly excluded from the Court’s jurisdiction on a de novo challenge under s 179 of the Act.

[6] The plaintiff agrees that he withdrew his personal grievance for unjustified disadvantage (among other things) prior to the investigation meeting and so the Authority did not investigate it. However, he submits that the matter remained before the Authority, albeit in a limited sense, and that now that the matter has been determined and none of those issues remains before the Authority, the entirety of the matter has been determined. He submits that the personal grievance for unjustified disadvantage should be included in “the matter” to be heard by the Court.

Background

[7] The Authority determination sets out the background to this matter and I do not understand it to be disputed by either party.

[8] In the statement of problem lodged with the Authority, the plaintiff claimed that one or more conditions of his employment had been affected to his disadvantage by the unjustified actions of the defendant, that he had been unjustifiably dismissed, and that he was owed arrears of wages for an unlawful deduction made from his final pay as well as other monies.

[9] An investigation meeting was scheduled for 29 November 2019. On 22 November 2019 Mr Sinton advised the Authority that he was withdrawing his claims except for his claim that the defendant had made an unlawful deduction from his final pay and other money was owing. The plaintiff attributes this decision to the difficulty he had faced identifying witnesses to alleged incidents, as well as a 'naïve' desire to minimise the costs for both parties given the modest sums at issue.

[10] That investigation meeting did not go ahead and the parties attended further mediation. They were unable to resolve the issues between them and in February 2020 the plaintiff lodged an amended statement of problem, reflecting the withdrawal of his previous claims and clarifying the issues needing investigation and determination. These did not include the unjustified disadvantage or unjustified dismissal claims.

[11] The Authority went on to determine the plaintiff's claim for arrears of wages relating to what he says was an unlawful deduction from his final pay, and for the payment of a fuel allowance in the amount of \$1,750, which he says was owed to him. The Authority found that there had been no deductions from his final pay and that he had received full payment of his final pay, including holiday pay. It also found that there was no basis for his claim of a fuel allowance of \$1,750.

[12] The defendant filed its own counterclaim in relation to monies it said were owed to it in relation to failure to return company property (uniforms), failure to pay employment-related debts and reimbursement of the cost of a training course.

[13] The Authority found that the plaintiff owed the defendant \$380 for unreturned uniforms but did not uphold the rest of the defendant's claims.

Relevant principles

[14] Section 179 of the Act provides the basis on which challenges may be brought to determinations of the Authority. In particular, s 179(1) provides:

179 Challenges to determinations of Authority

- (1) A party to a matter before the Authority who is dissatisfied with a written determination of the Authority ... (or any part of that determination) may elect to have the matter heard by the court.

[15] The relevant principles relating to the approach to be taken when looking at the meaning of the words “the matter” in s 179(1) are fully set out in *Hatcher v Burgess Crowley Civil Ltd* as follows:²

[8] It is well established that a broad approach is to be taken to the meaning of the word “matter” in s 179(1).

[9] In *Bourne v Real Journeys Ltd*, Judge Couch held that the Court could hear and decide matters which were not actually determined by the Authority, providing they were a part of the Authority’s investigation.

[10] As was observed by (now) Chief Judge Inglis, in *Udovenko v Offshore Marine Services (NZ) Ltd*, an overly technical approach is not to be taken on this issue, as this would enable form to trump substance. The Court referred to dicta of the Court of Appeal that parties should have every opportunity to ensure that the real controversy goes to trial, enabling the just determination of the proceeding.

[11] In that particular case, the Court was required to consider an application for leave to amend a statement of claim to include a second and alternative cause of action under the Wages Protection Act 1983. The Authority had dealt with a claim for wage arrears, but not an assertion that the employer had made an unlawful deduction, which was the issue raised in the proposed amendment. The Court held that broadly speaking the matter before the Authority was whether the defendant had paid the plaintiff appropriately, and if not, what wages he had owing to him. Leave was accordingly granted.

Analysis

[16] Given the accepted background to this matter, I am satisfied that the issues in relation to unjustified disadvantage, which have been pleaded in the statement of claim before the Court, were not part of the plaintiff’s claim as ultimately presented to the Authority for investigation and determination.

² *Hatcher v Burgess Crowley Civil Ltd* [2019] NZEmpC 5 (footnotes omitted).

[17] The current issue is whether, despite that, it can now be included as part of “the matter” under s 179.

[18] I do not accept the plaintiff’s argument that by not investigating the personal grievance, the Authority determined it. This is not a case where the Authority itself has decided not to consider the matter, as in *Abernethy v Dynea New Zealand Ltd*.³ In this case, the plaintiff withdrew the claim and filed an amended statement of problem confirming that withdrawal. Given this withdrawal, I do not think the Authority erred in not considering the unjustified dismissal and disadvantage claims. While the Authority has a broad power to recast claims,⁴ in the present case it was the plaintiff who had taken the step of doing so, by removing the claims of unjustified dismissal and unjustified disadvantage.

[19] The real nub of the issue is whether the claim of unjustified disadvantage relates to the employment relationship problem that was determined or part of the investigation by the Authority.⁵

[20] The employment relationship problem investigated and determined by the Authority related to a claim by the plaintiff of arrears of wages and unlawful deductions from his final pay. It also determined a counterclaim by the defendant regarding monies it said were owed to it in relation to a training course, unreturned uniforms and unpaid trade debts.

[21] Essentially, the matter before the Authority was whether the defendant had paid the plaintiff appropriately and, if not, what was owing to him, as well as whether the plaintiff owed the defendant any monies.

[22] The unjustified disadvantage claims that the plaintiff now wishes to include are dealt with at paras 4–5 of the statement of claim as follows:

4. I was injured at work due to a chain being left on the workshop floor. The next day the director yelled and abused me while in a rage. This was in front of a customer and I was humiliated by this and it led to me resigning.

³ *Abernethy v Dynea New Zealand Ltd* [2007] ERNZ 271 (EmpC).

⁴ Employment Relations Act 2000, s 160(3).

⁵ *Sibly v Christchurch City Council* [2002] 1 ERNZ 476 (EmpC).

5. This accident was not recorded, and I was not offered any sympathy or support. In fact, the rage was as a result of me not staying to do overtime the previous day when I had been injured and in pain.

[23] I do not consider that these claims can be considered, even in the broadest sense, to relate to the employment relationship problem that was before the Authority for investigation and determination.

[24] I have considered whether, despite that view, having regard to equity and good conscience, it is appropriate to extend the definition. However, while I agree that it is not for this Court to adopt a narrow interpretation of s 179, I am of the view that to extend the matter to include a claim of an entirely different nature, that was specifically withdrawn in the Authority by the party now wishing to pursue it, would be to extend the definition of s 179 too far and would not, in any event, be consistent with equity and good conscience.

[25] Accordingly, I rule that the claim of unjustified disadvantage cannot be raised as part of the plaintiff's de novo challenge.

[26] Costs are reserved.

Kathryn Beck
Judge

Judgment signed at 11 am on 2 September 2020