

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

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

**[2022] NZEmpC 81
EMPC 420/2021**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application to strike-out proceeding
BETWEEN	HONEYBUNCH PURE NATURALS NZ LIMITED First Plaintiff
AND	LISA MARY JOLLY Second Plaintiff
AND	BARBARA-LEE (BARLEE) VAN NIEKERK Defendant

Hearing: 16 May 2022
(Heard at Christchurch via Virtual Meeting Room)

Appearances: L Jolly, in person and as agent for first plaintiff
J Lynch and S Mitchell, counsel for defendant

Judgment: 16 May 2022

**ORAL INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH
(Application to strike-out proceeding)**

[1] On 27 October 2021, the Employment Relations Authority issued a determination in proceedings between Barbara-Lee van Niekerk, Honeybunch Pure Naturals NZ Ltd and Lisa Jolly.¹

¹ *Van Niekerk v Honeybunch Pure Naturals NZ Ltd* [2021] NZERA 474 (Member Craig).

[2] The outcome of that determination was a finding by the Authority that Ms van Niekerk was employed by Honeybunch, was unjustifiably constructively dismissed and had a sustainable personal grievance. The company was ordered to pay to Ms van Niekerk \$2,268 gross as lost wages and \$18,000 as compensation for humiliation, loss of dignity and injury to feelings under s 123(1)(c)(i) of the Employment Relations Act 2000.

[3] Honeybunch was also ordered to pay Ms van Niekerk \$146 gross as arrears of wages. Costs were reserved. A counterclaim by Honeybunch and Ms Jolly was unsuccessful.

[4] Honeybunch is dissatisfied with the outcome of the determination. It has made more than one attempt to file a challenge to that determination but each has suffered from difficulties. The first statement of claim was filed in November 2021. It did not comply with the Employment Court Regulations 2000. In particular it did not identify the alleged shortcomings in the Authority's determination or otherwise satisfy the regulations.

[5] An opportunity was provided to the company to amend that statement of claim to remedy its deficiencies, which were identified with Ms Jolly at a telephone directions conference.

[6] In February 2022, an amended statement of claim was filed. In short, it does not satisfy the requirements of the regulations or fix the shortcomings that were identified previously. It does not, for example, identify a cause of action arising from the Authority's findings but instead concentrates on criticisms of the procedure used by the Authority.

[7] Ms van Niekerk's response was to seek to strike-out the statement of claim. That application to strike-out was opposed.

[8] This morning Mr Lynch, who appears for Ms van Niekerk, made submissions supporting the application seeking to strike-out the claim. Those submissions have considerable force. In response Ms Jolly, for Honeybunch, argued that there is a

sustainable claim to present but acknowledged that her own lack of knowledge of the regulations, and perhaps unfamiliarity with Court proceedings, have brought her to the point where the amended statement of claim is deficient.

[9] Ms Jolly sought an opportunity to instruct a lawyer for the purposes of filing a complying statement of claim. After considering the matter with Ms Jolly and Mr Lynch, I have decided that the just step to take is to provide a final opportunity for Honeybunch to file an amended statement of claim that fully and fairly informs not only Ms van Niekerk, but the Court, of the issue to be addressed.

[10] I have decided that, while I will grant Ms Jolly's request, it will be subject to conditions which must be adhered to. They are to be expressed as unless orders.

[11] That, however, is not the end of the matter. Ms van Niekerk has been put to considerable expense as a result of the present application. It is appropriate for Honeybunch to contribute to Ms van Niekerk's costs arising from the application she has been required to make. Mr Lynch sought \$3,000 assessed on the basis of Category 2, Band B, of the Court's Guideline Scale.² I am satisfied that it is a reasonable sum in the circumstances.

[12] In the course of discussion, I raised with Ms Jolly whether the company was in the position to pay the amount claimed as costs. I also asked if the company was able to pay the amount ordered by the Authority to a stake-holder to be held on an interest-bearing deposit pending resolution of this proceeding. She confirmed the company is in a position to do both of those things.

[13] I make the following orders:

- (a) Honeybunch is to file and serve an amended statement of claim complying with the Employment Court Regulations 2000 no later than **4 pm on 30 May 2022.**

² "Employment Court of New Zealand Practice Directions" <www.employmentcourt.govt.nz> at No 16.

- (b) Costs in the sum of \$3,000 are to be paid to Ms van Niekerk, or as she directs, no later than **4 pm on 30 May 2022**.
- (c) The full amount of the Authority's determination, of 27 October 2021, is to be paid to the Registrar of this Court to be held on interest-bearing deposit pending further direction of the Court or agreement in writing by the parties. Payment is to be made no later than **4 pm on 30 May 2022**.
- (d) The orders in paragraphs 13(a)–(c) inclusive are unless orders. Unless each of those orders is complied with, Honeybunch's amended statement of claim, dated 27 February 2022, will be struck out without further application being made by Ms van Niekerk.

K G Smith
Judge

Judgment delivered orally at 10.25 am on 16 May 2022