

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

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

**[2022] NZEmpC 84
EMPC 373/2021**

IN THE MATTER OF an application under ss 138(6) and 140(6) of
 the Employment Relations Act 2000

AND IN THE MATTER of an application for substituted service

BETWEEN GURJIT SINGH
 Plaintiff

AND JARNAIL SINGH DHALIWAL
 First Defendant

AND VEER ENTERPRISE LIMITED
 Second Defendant

Hearing: On the papers

Appearances: J Wood, advocate for the plaintiff
 No appearance for first and second defendants

Judgment: 18 May 2022

**INTERLOCUTORY JUDGMENT OF JUDGE B A CORKILL
(Application for direction as to service upon second defendant)**

Background

[1] Proceedings have been brought in this Court to enforce a compliance order made by the Employment Relations Authority.¹

[2] The orders which were made by the Authority were:

¹ *Singh v Dhaliwal* [2021] NZERA 408 (Member Arthur).

- (a) The second defendant was directed to pay the plaintiff within 28 days of the date of the determination (being 20 September 2021):
 - (i) \$6,750 awarded as lost wages, with interest sought on that amount from 9 July 2021 to the date of payment; and
 - (ii) \$10,000 awarded as distress compensation, with interest sought on that amount from 9 July 2021 to the date of payment; and
 - (iii) \$3,801.25 awarded as wage arrears, with interest sought on that amount from 30 March 2020 to the date of payment.

- (b) The first and second defendants were ordered, jointly or severally, to pay Mr Singh:
 - (i) \$5,500 awarded as costs, with interest sought on that amount from 18 August 2021 to the date of payment; and
 - (ii) \$1,196.56 awarded as further costs and expenses in relation to an application made for compliance orders and interest.

- (c) The first defendant had also been found liable under s 142Y of the Employment Relations Act 2000 for the above wage arrears of \$3,801.25 due to Mr Singh. The Authority directed that if the company was unable to pay those arrears within 28 days of the date of the determination, the first defendant was to pay that sum to Mr Singh within that same period of 28 days.

[3] The Authority noted that should either defendant fail to comply with the orders made, Mr Singh could apply to this Court for exercise of its powers to fine, imprison, or sequester the property of the person in default.²

² Employment Relations Act 2000, ss 138(6) and 140(6).

Application for orders in this Court

[4] Mr Singh subsequently filed a statement of claim on 22 October 2021 seeking sanctions due to default on the part of the first and second defendants.

[5] The Registry was advised by email that service had been effected on 30 October 2021. When no defence was received, an affidavit was filed purporting to confirm that a copy of the Authority's determination, and the statement of claim, had been served on the first defendant at 6 Te Kahu Place, Takanini, Auckland.

[6] Because there were defects in the affidavit of service, and it was unclear whether personal service on the first defendant had occurred, or whether the second defendant had been served at all, a further affidavit of service was requested. A second affidavit of service was filed confirming that the documents had been served on the first defendant at 15 Bell Avenue, Mt Wellington, Auckland, on 13 December 2021. The affidavit stated that these documents were intended to amount to service on both the first defendant and the second defendant.

[7] This affidavit of service was not received by the Court until 14 February 2022. That same day, I issued a minute stating I was satisfied that the documents had been served on the first defendant, but because there was no evidence as to the location of the registered office of the second defendant, I was unable to conclude that service had been effected on that entity, pursuant to the requirements of reg 28 of the Employment Court Regulations 2000 (the Regulations).

[8] I indicated that the service which had taken place to that point on the first defendant may have been intended to be regarded as service on the company since he was a director of that entity. However, such a possibility would require an application to that effect supported by reliable evidence associating him with the company as director.

[9] On 29 March 2022, a further affidavit was filed stating that a third attempt at service had been undertaken: on 7 March 2022. The subject documents had been served on the company by them being handed to the wife of the first defendant, Mrs Dhaliwal, at 6 Te Kahu Place, Takanini, Auckland. She said, according to the

affidavit, that she was Mr Dhaliwal's wife and that the address was that of the company's registered office.

[10] On 8 April 2022, an application was made for a direction that the service just described as having occurred on 7 March 2022 was proper service on the second defendant. The application was supported by an affidavit annexing a copy of company office records confirming that the registered office of the second defendant is 6 Tē Kahu Place, Takanini, Auckland, and that the first defendant is a director of the second defendant.

[11] The difficulty which has arisen in this case relates to proper service of the proceedings on the second defendant. It is regrettable that attention was not paid at the outset to reg 28 of the Regulations, which spells out clearly the requirements of service on a company.

[12] I am now satisfied that service was effected on the second defendant at its registered office on 7 March 2022.

Result

[13] I find the first defendant was served with the proceedings on 13 December 2021, and the second defendant was served with the same documents on 7 March 2022.

[14] Each defendant had 30 clear days following the date of service of the statement of claim to file a statement of defence with the Registrar of the Employment Court.

[15] Neither defendant filed a statement of defence within the time allowed for.

[16] The Registrar is to fix a telephone directions conference with the representative for the plaintiff at which I will discuss suitable directions for the resolution of the proceeding.

[17] These will include a direction as to the filing of evidence to establish the claim as well as submissions. It is likely I will direct that the matter can be resolved on the papers.

B A Corkill

Judge

Judgment signed at 12.15 pm on 18 May 2022