

**IN THE EMPLOYMENT COURT  
WELLINGTON**

**WC 24/07  
WRC 21/07**

IN THE MATTER OF      an application for leave to file challenge  
                                 out of time

BETWEEN                ESTHER JOHANNA MONTEITH  
                                 Plaintiff

AND                        EDITH ANNE HAKANSSON  
                                 Defendant

Hearing:                18 September 2007  
                                 (Heard at Wellington (by telephone conference))

Appearances: E J Monteith (in person)  
                         E A Hakansson (in person)

Judgment:            26 September 2007

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**ORAL JUDGMENT OF JUDGE C M SHAW**

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[1]      Mrs Monteith has applied for leave to file a challenge out of time. Miss Hakansson opposes the application and the matter was heard by way of phone conference with both parties representing themselves.

**The facts**

[2]      On 1 May 2007, the Employment Relations Authority issued its determination in which it found Miss Hakansson had been unjustifiably dismissed by Mrs Monteith. The 28 days for filing a challenge ended on 29 May 2007.

[3]      Before the end of the 28 days, Mrs Monteith obtained information from the Court Registrar about the procedure for filing a challenge. On 5 June 2007 her statement of claim arrived at the Court. It was at that stage 7 days out of time.

[4] In her affidavit, Mrs Monteith explained that she had arranged for the statement of claim to be picked up from her café in Hastings on 28 May 2007 for overnight courier delivery to Wellington.

[5] The courier who collected it passed it to a shuttle driver and the envelope should have then been placed in the bag destined for Wellington. It appears that, because Mrs Monteith had used a prepaid courier ticket, the document may have been sent instead to Timaru from where Mrs Monteith's café sources custard squares.

[6] When she discovered the statement of claim had not arrived at the Court, Mrs Monteith contacted the courier company. It made inquiries and located the package. It was posted to the Court from Timaru arriving on 5 June 2007.

[7] Miss Hakansson was sceptical about how the postage error came about believing that it was because Mrs Monteith had used a method whereby she didn't need to pay for the courier parcel.

[8] As for the merits of her challenge, Mrs Monteith said it was based on her desire to challenge the findings of the Employment Relations Authority about who was believed during its investigation meeting. She maintains she told the truth on oath and she wished to have a chance to establish that she was telling the truth.

[9] Miss Hakansson submitted that there was some hardship to her by having to obtain a lawyer to send in the papers to oppose the application for leave. Apart from that fact, her main concerns were that the challenge had been lodged at all and that she has been held out of the money awarded to her by the Authority in May 2007, especially for the sums she should have received nearly a year earlier when she was dismissed.

## **Decision**

[10] I am satisfied that the delay in filing the statement of claim was very short, being a matter of 7 days only, but more importantly the delay was due to a postal

error but for which the statement of claim would have arrived on time on 29 May 2007.

[11] I am satisfied that, beyond the inconvenience of having to oppose a challenge which she would have had to bear if the statement of claim had arrived on time, Miss Hakansson has not suffered any particular prejudice or hardship by reason of the delay.

[12] It is clear from Mrs Monteith that she is dissatisfied with the findings of the Employment Relations Authority and believes that a full hearing under oath of the case will result in a different decision. In those circumstances, it is impossible at this stage to assess the merits of the case, however where one party has such a sense of injustice it is appropriate that that person has the opportunity to bring a challenge.

[13] This is a case where it is appropriate to grant the application for leave to file a statement of claim out of time, however leave is conditional on Mrs Monteith paying an amount into Court.

[14] The Authority awarded Miss Hakansson the sum of \$886.28 for holiday pay which was due to her at the termination of her employment. That is an amount that would be due to her regardless of the rights or wrongs of the dismissal. The condition of the grant of leave for Mrs Monteith to file her statement of claim out of time is that she pays \$886.28 to the Wellington Employment Court where it will be held in an interest bearing account until the conclusion of the challenge. This must be done within 14 days of this judgment. If the money is not received in that time then leave will not be granted. Once paid, the statement of claim will be accepted for filing on payment of the usual filing fee of \$200.

[15] Miss Hakansson must file a statement of defence to the statement of claim within 30 clear days after the statement of claim is properly filed in the Employment Court.

[16] Once the statement of defence has been received there will be another phone conference to make arrangements to have the matter set down for a hearing. The

parties are both from Hastings and they confirm that they wish the matter to be heard in Hastings.

**C M Shaw**  
**JUDGE**

Judgment signed at 9.30am on 26 September 2007