

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

Determination Number: WA 128/07
File Number: 5078222

BETWEEN Roshni Devi
(Applicant)

AND M Manhaas and Manhaas Industries
Limited and Seema Lal t/a Snacks
Foods Limited
(Respondents)

Member of Authority: P R Stapp

Representatives: R L Pinfold for Applicant
M S Manhaas for Respondent

Investigation Meeting: Scheduled for 18 September 2007

Submissions received: 30 & 31 August & 11 September 2007 from Applicant
9 September 2007 from Respondent

Determination: 13 September 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The employment relationship problem relates to a recovery of wages claim.

Application to Delay Investigation Meeting

[2] I have dealt with this matter on the papers provided by the parties, and I have read the file notes kept by the Support Officer of the telephone calls involving the parties. It is common sense to deal with the application on the papers since the Applicant is unable to attend a hearing, and although, the Applicant is represented, it will also save costs for both parties. The very nature of the matter invites a determination on the papers provided by the parties that they have had an opportunity to reply to.

[3] The Applicant is currently residing in Fiji and cannot afford to return to New Zealand to provide evidence in person. Apparently this situation is impacting on the Applicant's ability to meet immigration requirements. The Applicant has requested that the matter be extended to the next available date. I understand the Respondents are not opposing any extension, but are not agreeing to it either. The Respondents have made the following points. The Applicant has not complied with the Authority's timetable in the time provided, the Respondents have been prepared to accept the dates arranged by the Authority, and the Respondents say they will not be available from 21 September 2007 to the end of August 2008.

Determination

[4] The Applicant has provided material and information in regard to the claim relating to the employment relationship problem, but provided it outside the time as set. The Respondent has not yet replied to the material and has a right to do so in sufficient time.

[5] The Applicant is not available to attend the investigation meeting in person, and in the absence of any other suggestions, attendance would normally be required in person.

[6] The Applicant has financial difficulties and immigration requirements to meet that can not be arranged before the scheduled investigation meeting despite the notice of the meeting.

[7] I am satisfied that the date for the investigation meeting should be vacated. However in the circumstances I am not prepared to allocate another date at this stage. The Applicant's availability in the future is uncertain. At the moment there are no alternative dates available in the time the Applicant may be available in the next two months.

[8] The Respondents' claim of being unavailable between 21 September 2007 and the end of August 2008 has not been supported by sufficient details. I am not prepared to just accept this without details being provided. The Respondents have not yet replied to the Applicant's material and the time to do so has been affected by the Applicant not meeting the timetable.

[9] I am adjourning the investigation sine die until such time the Applicant can provide certainty about being available for an investigation meeting. When that happens I will look more closely at the Respondents' availability for an investigation meeting if any application is made to proceed by the Applicant.

Orders of the Authority

[10] The 18 September 2007 for the Authority's investigation meeting scheduled in Wellington has been vacated.

[11] The Respondents are to reply to the Applicant's material in due course upon being consulted on any further arrangements for an investigation meeting. This should be taken as notice that the Respondents need to be prepared to proceed.

[12] The application is adjourned sine die. That means the matter will be put to one side indefinitely. Nothing will happen with the application until the Applicant can provide definite details about being available for an investigation meeting. Then a telephone conference can be arranged to confirm arrangements as required.

P R Stapp
Member of the Employment Relations Authority