

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 11/10
5126876

BETWEEN CHRISTINA JOHNSON
 Applicant

AND NEW ZEALAND HEALTH
 INSURANCE BROKERS
 LIMITED
 First Respondent

AND GEOFF KLOOGH
 Second Respondent

Member of Authority: Helen Doyle

Representatives: Jenny Beck, Counsel for Applicant
 Werner van Harselaar, Counsel for Respondents
 William Martin, Counsel for Community Insurance and
 Investment Limited (opposing joinder to proceeding)

Investigation Meeting: On the papers and by telephone conference

Determination: 21 January 2010

**PRELIMINARY DETERMINATION OF THE AUTHORITY AS TO
JOINDER**

[1] In the Authority's notice of direction dated 5 November 2009 the history of the employment relationship problem before the Authority was set out and the view of the first and second respondents in their respective statements in reply that the applicant's employer was a company, Community Insurance and Investment Limited t/a CII Group (CII Group) who should be joined to the proceeding. It was recorded in the notice of direction that the applicant was not happy for the CII Group to be joined to the proceedings before the Authority as a respondent.

[2] I indicated my view in the notice of direction that to more effectively dispose of the matter according to its substantial merits and equities, CII Group should be joined to the proceeding in terms of s.221 of the Employment Relations Act 2000. I made the following directions:

- *CII Group was to be served with a copy of the notice of direction at its registered office and address for service together with the amended statement of problem and statement in reply lodged on behalf of the first and second respondents;*
- *CII Group has until Friday, 13 November 2009, to make any comment in terms of an order joining it to these proceedings.*

[3] After the notice was issued, the Authority was advised by Mr Martin that he had recently been instructed by CII Group and that he wished an extension in which to prepare a response to the Authority. The extension was agreed to by counsel for the applicant, first and second respondents and the Authority. The Authority received toward the end of November 2009 Mr Martin's memorandum about a possible joinder of CII Group to the proceeding.

[4] Mr Martin stated in his memorandum amongst other matters, that CII Group was not, during the relevant time and never intended to be the applicant's employer and that it was nothing more than a conduit for the employment relationship between the applicant and one or both of the respondents.

[5] Mr Martin submitted in his memorandum that a joinder of CII Group to the matter was unnecessary and further that it was not considered by CII Group that the applicant believed she had an employment relationship with the company.

[6] During a telephone conference with counsel on 13 January 2010 I heard their views as to whether CII Group should be joined to the proceeding. Mr Martin was able to confirm shortly after the directions conference that John Campbell, director of the CII Group, would be willing to attend as a witness for the applicant at any investigation meeting.

[7] It is generally for an applicant to decide who she or he wishes to proceed against. The applicant is represented by counsel and does not want CII Group joined to the proceeding.

[8] This is not a case where the Authority considers that CII Group would be directly affected by any order that may be made in the proceeding between the

applicant and the first and second respondents. There is a possibility a finding may be made that the first and second respondents were not the applicant's employer at the material time. The applicant then if she wished to pursue CII Group would have to lodge new proceedings against that company. Ms Beck is aware of that and said her client was still firmly of the view that CII Group should not be joined to the current proceeding.

[9] I have then considered whether the Authority is able to effectively dispose of the matter according to its substantial merits and equities without joining CII Group. The Authority will, if CII Group is not joined to the proceeding, still be able to hear evidence so as to determine the identity of the applicant's employer and I do not see any particular difficulty there for the Authority or the first and second respondents. It is of assistance in the circumstances of this case that the director of CII Group has indicated through Mr Martin that he is prepared to attend an investigation meeting and give evidence.

[10] Standing back and considering the matter as a whole the Authority considers it is able to effectively dispose of the matter before it according to its substantial merits and equities without joining CII Group.

[11] In conclusion I do not intend to join CII Group to the proceeding. I shall have a support officer indicate to Ms Beck and Mr van Harselaar a suitable date for the Authority to investigate the employment relationship problem between the parties.

Costs

[12] I reserve the issue of costs in this matter. I intend, unless counsel put forward a good reason to deal with costs on this preliminary matter now, leaving the issue of costs until after determination of the substantive matter.

Helen Doyle
Member of the Employment Relations Authority