

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 32
5311081

BETWEEN BRIGHTWATER ENGINEERS
LIMITED
Applicant

A N D BRIAN ARROWSMITH
First Respondent

STUART ARROWSMITH
Second Respondent

ANDREW DOOCEY
Third Respondent

MICHAEL COLQUHOUN
Fourth Respondent

Member of Authority: Helen Doyle

Representatives: Phil Butler, Advocate for Applicant
Angela Sharma, Counsel for Respondents

Date of Determination: 12 February 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Recently the bailiff attempted to execute the determination of the Employment Relations Authority dated 17 December 2012 ([2012] NZERA Christchurch 275) on behalf of the first and second respondents.

[2] In response to this Brightwater Engineers Limited paid the amount owed in full to the first and second respondent to the District Court by way of cheque and the money is held there. Part of the determination is the subject of an application before the Employment Court for an extension of time to file a statement of claim that challenges the amount of the awards of compensation in the determination.

[3] Late in the afternoon on Thursday 7 February 2013 the Authority received an ex parte application from Mr Butler on behalf of the Brightwater Engineers Limited. There were two problems set out in the application that the applicant wished the Authority to resolve on an ex parte basis. The first was a stay on various orders pending the outcome of the challenge, and the second was an order under s.123(2) Employment Relations Act 2000 to make payment of the balance of orders that are not those in the draft statement of claim before the Employment Court and any other subsequent order as to costs by instalment on the following dates; 1 March, 29 March and 4 May 2013.

[4] The Authority sent a minute to the parties advising that the application was not an appropriate one to be made on an ex parte basis and a direction was made that it be dealt with inter partes. A copy of the application and documents attached thereto were provided to Ms Sharma who represents the respondents.

[5] Subsequently an affidavit was provided from the Chief Financial Officer for the applicant company Campbell Smith sworn 11 February 2013 containing confidential financial information and the Authority made appropriate orders to protect that confidentiality.

[6] The Authority has only today been able to talk to Ms Sharma about this matter due to her unavailability because of her appearances in the Employment Court.

[7] The Authority advised the parties during the telephone conference today that it did not consider it had jurisdiction to deal with the stay of execution for the awards that are the subject of the draft statement of claim and would remove that part of the application to the Employment Court of its own motion.

[8] The Authority does have jurisdiction to deal with stay applications where there has been an election under s.179 of the Employment Relations Act 2000 but that is not the situation here. At this point in time there is an application before the Employment Court for an extension of time to commence proceedings. The Authority understands from Mr Butler that a timetable has been set for submissions in support and opposition to the application which will then be dealt with by the Court on the papers. There is urgency with respect to this matter because Mr Butler advises that that money may well be released at any time from today onward from the District Court to the first and second respondent.

[9] This is an unusual situation. Nevertheless the urgency requires that part of the application be removed to the Employment Court as soon as possible under s.178(2)(d). I also note that the Court already has before it under s.178(2)(c) proceedings which are between the parties involving this issue.

[10] The support officer is to provide to the Employment Court the application and supporting documents and the affidavit of Mr Smith.

Order made

[11] The Authority orders, on its own motion that the application to stay the execution of the amounts in the draft statement of claim before the Employment Court under 5311081 be removed to the Employment Court. The other part of the application concerns payment by instalment by Brightwater Engineers Limited and is to remain before the Authority.

[12] Costs are reserved.

Helen Doyle
Member of the Employment Relations Authority