

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 31
5408873

BETWEEN	HAYDEN NASH Applicant
A N D	WELLINGTON REGIONAL CHAMBER OF COMMERCE First Respondent
A N D	NEW ZEALAND TRADE AND ENTERPRISE Second Respondent

Member of Authority: Trish MacKinnon

Representatives: Applicant self-represented
Susan Jane Davies, Counsel for First Respondent
Stephen Young, for Second Respondent

Date of Determination: 25 March 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Hayden Nash claims he was unjustifiably disadvantaged and unjustifiably dismissed by both the Wellington Regional Chamber of Commerce (WRCC) and New Zealand Trade and Enterprise (NZTE). He says he was employed by those organisations from 23 January 2008 to 2 October 2009, when his employment was terminated for redundancy.

[2] The First Respondent, WRCC, says it was Mr Nash's sole employer during the period in question. It claims Mr Nash is barred by operation of section 114(6) of the Employment Relations Act 2000 (the Act) from bringing the current proceedings and asks the Authority to dismiss them.

[3] The Second Respondent, NZTE, says it has never been Mr Nash's employer and has no responsibility or obligation in relation to his employment relationship

problem. It also says Mr Nash is prevented from commencing proceedings in the Authority as it is more than three years since he first raised a personal grievance with NZTE.

Identity of employer

[4] Mr Nash has previously claimed Business Capability New Zealand Society Incorporated was his employer for the period in question. The Authority determined that to be incorrect in January 2011 when it found WRCC to have been Mr Nash's employer.¹ Mr Nash initially filed a challenge to that determination which he subsequently withdrew.

[5] I discussed the identification of the employer in a telephone conference with the parties on 4 March 2013. In the course of the telephone conference I informed the parties of my intention to strike out NZTE as a respondent to these proceedings on the basis that the Authority had already found WRCC to have been, at all material times, Mr Nash's employer.

[6] I confirmed that intention in a further telephone conference on 22 March 2013, which was held at Mr Nash's request.

[7] Section 221 of the Act provides the Authority with wide discretion to amend proceedings, *to more effectually dispose of any matter before it according to the substantial merits and equities of the case*. The discretion includes directing parties to be joined or struck out.

Operation of section 114 (6) of the Act

[8] Mr Nash has indicated he wishes to proceed in his claims against WRCC as sole respondent while reserving the right to challenge my determination to strike out NZTE as Second Respondent. Section 114(6) of the Act provides:

No action may be commenced in the Authority or the court in relation to a personal grievance more than 3 years after the date on which the personal grievance was raised in accordance with this section.

[9] Mr Nash raised a personal grievance for unjustifiable dismissal against WRCC by letter dated 24 November 2009. The 3 year time within which proceedings could

¹ [2011] NZERA Wellington 12, 28 January 2011

be commenced ended on 23 November 2012. Mr Nash filed his Statement of Problem outside that time frame on 28 January 2013.

[10] Mr Nash wishes to apply to the Authority to exercise its discretion under section 219 of the Act to extend the time within which proceedings may be commenced. The parties have agreed to that matter being determined on the papers following the filing of submissions and other documentation.

Determination

[11] I direct NZTE to be struck out of the current proceedings, pursuant to section 221(a) of the Employment Relations Act 2000.

Trish MacKinnon
Member of the Employment Relations Authority