

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2015] NZERA Christchurch 56  
5450193

BETWEEN            APRIL ISNANTO AND 52  
                             OTHERS  
                             Applicants

A N D                JUAHM INDUSTRIES CO LTD  
                             Respondent

Member of Authority:     David Appleton

Representatives:         Peter Dawson, Counsel for the Applicants  
                                     Pheroze Jagose, Counsel for the Respondent

Investigation Meeting:    Determined on the papers by consent

Submissions Received:    Last information received 1 May 2015

Date of Determination:    5 May 2015

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**DETERMINATION OF THE AUTHORITY ON A PRELIMINARY ISSUE**

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**Employment relationship problem**

[1]     The applicants are seamen formerly employed by the respondent company, which owns the fishing vessel *Pacinui* on which the applicants worked. The applicants have brought claims for unpaid wages.

[2]     The applicants are all nationals of the Republic of Indonesia, all of whom reside in that country. Mr Dawson seeks to obtain disclosure of time and wage records from the respondent in respect of the 53 applicants in order to calculate with more accuracy the unpaid wages sought; (the estimated sum owed according to the statement of problem is \$2,687,454).

[3]     The respondent has, however, raised an objection on the basis that Mr Dawson has failed to satisfy s.236(3) of the Employment Relations Act 2000 (the Act).

[4] Section 236(3) of the Act provides as follows:

*Any person purporting to represent any employee or employer must establish that person's authority for that representation.*

[5] Correspondence on this issue has been going backwards and forwards between the parties' representatives for some time. In explaining what he has done to establish his authority to represent the seamen, Mr Dawson has advised that he travelled to Tegal in the Republic of Indonesia on 27 August 2013 and met with a number of members of the crew of the *Pacinui* on 30 and 31 August 2013. Mr Dawson advises that he was accompanied by two translators and an Indonesian lawyer.

[6] Mr Dawson advises the Authority that he addressed 37 of the 53 applicants during the week of 27 August 2013. He states that a further 5 applicants were represented by family members who had signed Powers of Attorney documents for those applicants. Two of these applicants subsequently met one of the translators and signed engagement letters.

[7] Mr Dawson advises that his team took steps to establish a process by which his letters of engagement would be signed and the identity of each individual crew member verified. This was done by the crew lining up and presenting their passports, seaman's books, or national identity cards to the translators and completing personal details on the front page of the letters of engagement and signing them on the last page. Mr Dawson advises that each applicant's identity was then confirmed by comparing the crew member to the photograph contained in the identity document produced.

[8] The crew member also provided a passport photograph which was attached to the letter of engagement. As a further check, Mr Dawson advises that his team has cross-referenced the signatures on the English and Indonesian versions of the letters of engagement with the signature that appears on the identity documentation.

[9] Mr Dawson explains that of the 11 remaining applicants who were not present at the meeting of August 2013, an employee of Mr Dawson's firm has spoken with 3 of them via SKYPE using one of the translators and verified their identities during the SKYPE calls. Of the remaining 8 applicants they have all spoken with one of the translators, who, it is understood, has also verified their identities.

[10] Mr Dawson provided to Mr Jagose photocopies of the signature pages of the letters of engagement, together with copies of the identity documents and, where relevant, copies of the Powers of Attorney documents. Mr Jagose then raised a number of concerns in relation to the documents he had been sent arguing that he was not satisfied that the majority of the documents adequately confirmed the identities of the applicants. Consequently, he argued, Mr Dawson had not established that he had the authority of the majority of the applicants to represent them in the action before the Authority.

[11] Mr Jagose's concerns fell into three categories: He asserted that there were photocopying irregularities in respect of 21 of the documents tendered to him which called into question the authenticity of the signatures on the retainer letter. Mr Jagose was of the view that there were significant differences in the signatures as between those on the retainer letters and on the identity documents in 16 cases and he stated that there were concerns with respect to the Powers of Attorney in respect of 7 applicants.

[12] In response to concerns raised by Mr Dawson over the length of time that it was taking to satisfy the respondent that Mr Dawson had the authority to act for all of the applicants, a telephone conference was held in which it was agreed that it was for the Authority to be satisfied that s.236(3) of the Act has been satisfied. To that end, Mr Dawson provided original copies of the retainer letters and copies of the identity documents to the Authority so that it could decide, on a balance of probabilities, whether Mr Dawson had established the identities of these individuals and, by extension, obtained authority to act for them.

[13] I have examined the signatures on the letters of engagement in respect of each applicant, save in the case Azis Rifai and Rio Ode in respect of whom no retainer letters were provided. In the majority of these cases photographs were attached to the retainer letters which I was able to compare with the photographs on the copy ID documents. In the case of the applicant Iwan Akhiri Setiyadi no identity documents were supplied and so there was nothing to compare the signatures against. This was also the case in respect of the applicant Kariri, Purwadi Asyari and applicant Sapidin.

[14] Where retainer letters had been signed by a family member, I compared that signature with the signature on the Power of Attorney and then compared the

signature of the applicant on that same Power of Attorney document with the signature on the ID document provided.

[15] Having been provided with the originals of the retainer letters, I am satisfied that all of the photocopying irregularities identified by Mr Jagose have been resolved. In the cases where Mr Jagose has questioned that the signatures match, I am satisfied that, in each case, the signature matches closely enough to satisfy me that, on the balance of probabilities, identity has been established.

[16] In a case where a Power of Attorney has not been dated, the signature of the applicant on the Power of Attorney matches that of the identity document provided. In the case of an applicant where the Power of Attorney post-dates the retainer letters, the applicant's signature on the Power of Attorney document matches that on the passport. I am therefore satisfied that identity has been established on the balance of probabilities in both of these cases.

[17] In the case where no photographs have been provided to compare against the identity document, the signatures match and I am therefore satisfied on a balance of probabilities that identity has been established in each case.

### **Conclusion**

[18] Having carried out this exercise, I am satisfied on a balance of probabilities that identities have been established in respect of 46 of the 53 applicants. I am therefore also satisfied that, in all of these 46 cases, Mr Dawson has established his authority to represent these individuals in the present action.

[19] I am not satisfied on the balance of probabilities that he has done so in respect of the following applicants:

- (i) Azis Rifai, as no letters of engagement have been presented;
- (ii) Iwan Akhiri Setiyadi, as no copy identity document has been provided;
- (iii) Kariri, as no copy identity documents have been provided;
- (iv) Purwadi Asyari, as no copy identity documents have been provided;
- (v) Rio Ode, as no documents have been provided;

- (vi) Sapidin, as no copy identity documents have been provided;
- (vii) Suratno, as no photographs have been provided, the copy passport is stamped with the word “void” and someone has written underneath *brother in law of Suratno* but no Power of Attorney documents have been provided.

### **Next steps and directions**

[20] With respect of the 7 applicants for whom I am not satisfied that identity has been established on the balance of probabilities, and therefore in respect of whom I am not satisfied that Mr Dawson has established his authority to represent them, I invite Mr Dawson to provide either the missing documents or to produce sworn affidavit evidence of how the identity of each individual was established.

[21] I do not consider that it is necessary to delay the progress of the matter in respect of the remaining 46 applicants and I direct the respondent to provide to Mr Dawson copies of the time and wage records Mr Dawson has requested as a matter of urgency and no later than 7 days from the date of this determination.

[22] In the case of any difficulty, the parties are to contact the Authority as a matter of urgency.

### **Costs**

[23] Costs are reserved. If either party wishes to claim a contribution to their costs in respect of the exercise carried out by them in respect of establishing Mr Dawson’s authority to act, they are to make representations after the substantive issue has been determined.

David Appleton  
Member of the Employment Relations Authority