

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 186
3052597

BETWEEN JAMES HILFORD
 Applicant

AND MITRE 10 (NEW ZEALAND)
 LIMITED
 Respondent

Member of Authority: Nicola Craig

Representatives: The applicant in person
 No appearance for respondent
 Russell Drake for proposed respondent, Hamilton
 Hardware Retail Limited

Investigation Meeting: On the papers

Submissions received: 13 March 2019 from applicant
 20 March 2019 from proposed respondent

Date of determination: 28 March 2019

PRELIMINARY DETERMINATION OF THE AUTHORITY

- A. Hamilton Hardware Retail Limited (trading as Mitre 10 MEGA in Te Rapa) is joined as respondent in this proceeding and Mitre 10 (New Zealand) Limited is struck out as respondent.**

Employment Relationship Problem

[1] This determination deals with a preliminary issue about who James Hilford's employer was when he worked in a Hamilton store and thus who should be the respondent in this case.

[2] I have not recorded all the evidence and submissions received but have made findings, expressed conclusions and made orders, in accordance with s 174E of the Employment Relations Act 2000 (the Act).

Claim by James Hilford

[3] On 30 January 2019 Mr Hilford filed an application in the Authority, identifying Mitre 10 Te Rapa as the respondent. The statement of problem refers to Mr Hilford working for Mitre 10 Mega Te Rapa. The employment relationship problems appear to be a failure to provide meal and rest breaks, and dismissal, said to have occurred whilst Mr Hilford was on a trial period. However, correspondence referred to in the statement of problem also identified additional issues.

[4] After sending out the statement of problem, the Authority received an email from the human resources department at Mitre 10 MEGA Te Rapa, requesting an extension to file a statement in reply. The documents sent by the Authority were noted to have gone to "our Support Centre" in Albany, Auckland rather than to Mitre 10 MEGA Hamilton "which the case relates to". An extension was granted.

[5] From material filed it appears that MEGA and Mega are used interchangeably, as are Te Rapa and Hamilton, in the store name.

Response to the claim

[6] On 27 February 2019 the Authority received a statement in reply. In that document the respondent is referred to in the entitling as Mitre 10 (New Zealand) Limited. However, the document contains a reply from Hamilton Hardware Retail Limited (HHRL) and is said to be lodged for HHRL. The Authority has had no contact from anyone representing Mitre 10 (New Zealand) Limited, a company with its registered office in Albany, Auckland.

[7] The statement in reply states that Mr Hilford was employed by HHRL from 19 July 2019 to 10 August 2019. It also claims that Mr Hilford did not raise a grievance

against HHRL within the time required by s 114 of the Act. A distinction is drawn between Mitre 10 MEGA and Mitre 10, with the two groups having different branding.

Process adopted

[8] The Authority advised the parties that it was of its own motion considering joining HHRL as a party to this proceeding and striking out Mitre 10 (New Zealand) Limited. Submissions were received.

[9] Mr Hilford responded that he worked at and was dismissed from Mitre 10 Mega in Te Rapa. He asked the Authority to proceed with whatever needs to be done to have his issue dealt with by whomever manages the store.

[10] Submissions were filed for HHRL opposing its joinder as a party. That was on the basis of its view that a valid personal grievance claim had not been raised by Mr Hilford against it as the employing entity and there were insufficient grounds pursuant to s 115 of the Act for the Authority to grant leave for the grievance to be raised late. I note that Mr Hilford has yet to file an application for leave to raise a grievance late. HHRL's submissions describe Mitre 10 (New Zealand) Ltd as entirely different to HHRL, with the two being separate legal entities.

Identity of employer

[11] Mr Hilford identifies that he worked at the Mitre 10 MEGA store in Te Rapa. HHRL says that it, trading as Mitre 10 MEGA in Te Rapa, was Mr Hilford's employer.

[12] The employment agreement filed with the statement in reply refers to the employer as HHRL trading as Mitre 10 MEGA Hamilton, although the signature provision refers to the store manager of Mitre 10 MEGA Te Rapa. The letter offering employment, and enclosing the agreement, refers to Mitre 10 MEGA and Mitre 10 MEGA Te Rapa but not to a company.

[13] Mr Hilford's payslip refers to "Mitre 10", "Mitre 10 MEGA Te Rapa" and HHRL.

[14] I am satisfied that Mr Hilford was employed by Hamilton Hardware Retail Ltd, trading as Mitre 10 MEGA, which has its store in Te Rapa.

Joinder

[15] Under s 221 of the Act the Authority may, of its own motion or on application, direct parties to be joined to, or struck out as parties. This is to allow more effectual disposal of matters.

[16] I am satisfied that joining HHRL to this proceeding will allow the Authority to more effectually dispose of Mr Hilford's claim. I therefore order Hamilton Hardware Retail Limited, trading as Mitre 10 MEGA in Te Rapa, to be joined as respondent in this proceeding and Mitre 10 (New Zealand) Limited to be struck out as respondent.

[17] I acknowledge that HHRL is claiming that Mr Hilford did not raise a grievance with it within the prescribed period. That matter will be considered in due course, but it is important to have the employer as a party to the proceeding before that issue is investigated. HHRL has also raised a preliminary issue about the nature of Mr Hilford's personal grievance. There is reference in correspondence sent on Mr Hilford's behalf to constructive dismissal whereas HHRL says that Mr Hilford was dismissed under a trial period so ss 67A and 67B of the Act precludes a personal grievance claim. In any event it appears that Mr Hilford may also be pursuing unjustified disadvantage claims and this needs to be clarified.

[18] A case management conference will be arranged by the Authority to progress these matters.

Nicola Craig
Member of the Employment Relations Authority