

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2019] NZERA 317  
3030918

BETWEEN            LUKE WILSON  
                                 Applicant

AND                    BRAND DEVELOPERS LIMITED  
                                 Respondent

Member of Authority:    Tania Tetitaha

Representatives:        B Bucket/T Cooper, counsel for the Applicant  
                                 S M Laphorne, counsel for the Respondent

Investigation Meeting:    On the papers

Submissions [and further    14 March, 5 April 2019 from the Applicant  
Information] Received:    18 February and 21 March 2019 from the Respondent

Date of Determination:    30 May 2019

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1]    This determination deals with an application for joinder of a party to another file 3041577.

**Grounds for Joinder**

[2]    The application for joinder dated 13 February 2019 seeks joinder pursuant to s 221 of the Employment Relations Act 2000 (Act) on the following grounds:

- (a)    The termination of both applicant's employment arose out of similar facts, being the improper use of the quality control scheme;
- (b)    The substantial merits and equities of each case are the same and require a joinder;

- (c) Evidence given will be the same in both proceedings. The first applicant will give evidence in support of the second applicant's claims and vice versa;
- (d) Both applicants claim that they have been subjected to a disparity of treatment and rely upon the same evidence to support their claim;
- (e) It is in the interests of justice that the parties are to be joined;
- (f) A direction that the parties are to be joined is both necessary and expedient in the circumstances;
- (g) A joinder will avoid duplicate evidence and reduce costs;
- (h) The Authority has jurisdiction to direct that the parties are to be joined;
- (i) Upon the further grounds outlined in the amended statement of problem filed on behalf of the applicant and in file number 3041577.

## Law

[3] Section 221 of the Employment Relations Act 2000 provides:

### **Joinder, waiver, and extension of time**

In order to enable the court or the Authority, as the case may be, to more effectually dispose of any matter before it according to the substantial merits and equities of the case, it may, at any stage of the proceedings, of its own motion or on the application of any of the parties, and upon such terms as it thinks fit, by order,—

- (a) direct parties to be joined or struck out; and
- (b) amend or waive any error or defect in the proceedings; and
- (c) subject to section 114(4), extend the time within which anything is to or may be done; and
- (d) generally give such directions as are necessary or expedient in the circumstances.

[4] The test in s221 requires:<sup>1</sup>

For someone to be joined as a party in litigation (and for a number of other purposes irrelevant to this application), the [Authority] must be satisfied that the joinder will enable it to more effectually dispose of any matter before it according to the substantial merits and equities of the case. There is a further restriction. A stranger to the litigation cannot apply to be joined as a party. Such an application must either be made by an existing party or may be brought about by the [Authority] "of its own motion". There is also an express power under s 221 for joinder to be on such terms as the [Authority] thinks fit.

---

<sup>1</sup> *Lowe v New Zealand Post Ltd* [2003] 2 NZER 72 at [35].

**Determination**

[5] These applications deal with distinctly different factual and legal issues that are peculiar to each of the applicants.

[6] The applicant in this proceeding alleges he was unjustifiably dismissed and/or disadvantaged by actions that took place between 19 April and 1 May 2018. This is a different timeframe to the causes of action alleged by the applicant in 3041577. In 3041577 the disadvantage grievances occurred on 7 September 2017 and the constructive and unjustified dismissal occurred on 1 September 2018. The facts pleaded in 3041577 are peculiar to that applicant. There does not appear to be any overlap with this applicant other than the workplace and respondent employer.

[7] None of the facts pleaded in each of the statements of problem refer to the presence or involvement of the applicants in the others grievances

[8] One personal grievance in the statement of problem 3041577 is legally different from that alleged in this proceeding. The applicant in 3041577 resigned on 1 September 2018. The applicant here was dismissed on 1 May 2018. The unjustified disadvantage in the statement of problem 3041577 occurred on 7 September 2017. It is then followed by two disadvantages arising from procedurally deficient investigations in 30 November 2017 and 30 April 2018. The disciplinary investigation restarts in August 2018 leading to the resignation.

[9] None of these grievances and other causes of action in 3041577 involve the applicant in this proceeding. No orders are being sought that require the applicant in this proceeding to be heard in respect of 3041577 or vice versa.

[10] In the circumstances I decline to join the applicant in 3041577 to this proceeding. The application for joinder is dismissed. Costs are reserved.

**TG Tetitaha**  
**Member of the Employment Relations Authority**