

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2020] NZERA 517
3071212

BETWEEN	RANJEET SINGH Applicant
AND	MARTON WHOLESALE LIQUOR LIMITED First Respondent
AND	VIJAY KUMAR KAMBOJ Second Respondent

Member of Authority:	Trish MacKinnon
Representatives:	Sunny Sehgal, advocate for the Applicant Karl Gill, advocate for the Respondents
Investigation Meeting:	On the papers
Submissions [and further Information] Received:	30 October and 10 November 2020 from the Respondent 6 November 2020 from the Applicant
Date of Determination:	11 December 2020

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 15 August 2019 Ranjeet Singh brought an application to the Authority for investigation. Amongst his claims are that his former employer committed a number of minimum entitlement breaches; required him to pay an unlawful premium; failed to keep wage and time records in accordance with statutory requirements; failed to pay him wages when they fell due; and breached the terms of his individual employment agreement (IEA). He also claims to have been constructively dismissed from his employment.

[2] Mr Singh seeks financial remedies and the imposition of a penalty in relation to these claims. He asks the Authority to determine whether Vijay Kumar Kamboj was involved, under s 142W of the Employment Relations Act 2000 (the Act), in the wage, wage records, and minimum entitlement breaches. Mr Kamboj is the sole director and shareholder of Marton Wholesale Liquor Limited (MWLL).

[3] MWLL and Mr Kamboj deny all of Mr Singh's claims. By memorandum dated 13 October 2020 the respondents asked the Authority to strike out Mr Singh's claims on the basis that they are frivolous or vexatious.

[4] In the course of a case management conference with the parties on 23 October 2020 it was agreed the Authority would determine the respondents' application on the basis of submissions from the parties.

The Authority's power to dismiss proceedings

[5] Clause 12A, Schedule 2 of the Act provides that:

- (1) The Authority may, at any time in any proceedings, dismiss a matter or defence that the Authority considers to be frivolous or vexatious.
- (2) In any such case, the order of the Authority may include an order for payment of costs and expenses against the party bringing the matter or defence.

The respondents' submissions

[6] MWLL and Mr Kamboj acknowledge Mr Singh's claims are not frivolous, but submit they are vexatious. They question whether there are any "real issues" and whether there is any evidence to support Mr Singh's claims, which they allege have been made for the sole purpose of harassing or injuring the employer through continuously bringing claims against them. The respondents also refer to claims they say Mr Singh has made on various issues that are not based on facts and have no merit.

[7] In making these assertions, the respondents refer to attempts by Mr Singh's representatives to "get some quick money" from Liquor shop owners.

[8] As part of their submissions for striking out Mr Singh's application, the respondents have requested a stay of proceedings, alleging abuse of process by Mr Singh. They are critical of the manner in which Mr Singh's representative presented his claims to them and to their

advocate, Karl Gill. The respondents have also referred to the lack of compliance by the applicant with timeframes set by the Authority for the filing of evidence, and to the poor quality of the evidence provided by Mr Singh in relation to proving the claims he has made.

Mr Singh's submissions

[9] Mr Singh submits that dismissing a claim is a serious step and not one to be taken lightly. He refers to the Employment Court's judgment in *Lumsden v Sky City Management Limited*¹ in which the court noted the high threshold for establishing that a claim should be struck out on the grounds of being frivolous or vexatious.

[10] Mr Singh submits that his claims are serious; that he has complied with all directions issued by the Authority; and that he has provided as much documentation as he can to assist the investigation of his claims. Mr Singh notes the contradiction in the respondents' submissions with regard to their acknowledgement that his claims are not frivolous. He says the respondents have used as their definition of a frivolous claim, a claim that "has no merit whatsoever". However they have also described his claims as being "various....of different issues that are not based on facts or have no merit."

[11] With regard to their depiction of his claims as "vexatious", and their referring to his "bringing continuous claims against them", Mr Singh asserts his current claims are the only occasion on which he has brought a matter to the Authority. In his submission, the proceedings he has brought have a reasonable basis. He asks the Authority to proceed with hearing his claims in January 2021 as currently scheduled, submitting that the dismissal of his claims without investigation would have serious implications for him as he has spent much time and money to date in preparation.

[12] Finally, Mr Singh accuses the respondents of attempting to delay proceedings by way of its interlocutory application, which is both wasting time and increasing his legal costs.

The respondents' reply submissions

[13] In discursive reply submissions, which I have considered but will not traverse in detail, the respondents reject Mr Singh's definition, taken from Wikipedia, of "vexatious", questioning the validity of Wikipedia as a reliable source. They quote at length from a

¹ [2015] NZEmpC 225.

Wellington Standards Committee decision in respect of a complaint about the conduct of a lawyer in a relationship property matter.

[14] The Standards Committee had dismissed the complaint as vexatious under s 138(1)(c) of the Lawyers and Conveyancers Act 2006, noting that “vexatious” has assumed a specific meaning in the law which differs somewhat from the way it might be used in ordinary language. The decision cited Judge Moss in *NZCYPS v B²* as concluding that in a legal context “vexatious” has come to mean “not having sufficient grounds”.

[15] The respondents submit Mr Singh has failed to provide examples of the breaches of minimum standards he has claimed, or provided any supporting evidence. He has not stated “what when and how the unjustifiable constructive dismissal took place”. Referring to bank statements provided as evidence by Mr Singh, the respondents claim not all statements have been provided and they are not cross referenced to allow a response. They make a number of other assertions about Mr Singh’s evidence and refer in their summary to his claims being “frivolous and bad faith”.

[16] The respondents reiterate their request that the Authority dismiss Mr Singh’s claims in full.

Discussion

[17] The Authority is an investigative body, the role of which is to resolve employment relationship problems by establishing the facts and making a determination according to the substantial merits of the case, without regard to technicalities.³ It is obliged by statute to do the following in carrying out its role:

- (a) comply with the principles of natural justice; and
- (b) aim to promote good faith behaviour; and
- (c) support successful employment relationships; and
- (d) generally further the object of the Act.⁴

[18] The object of the Act, as set out in section 3, is to build productive employment relationships through the promotion of good faith in all aspects of the employment environment

² [1996] NZFLR 385.

³ Section 157(1) of the Act.

⁴ Section 157(2).

and of the employment relationship. The means by which this is to be achieved include acknowledging and addressing the inherent inequality of power in employment relationships and promoting the effective enforcement of employment standards, in particular by conferring enforcement powers on Labour Inspectors, the Authority and the Employment Court.

[19] Mr Singh has brought claims to the Authority including minimum standards and unlawful premium claims as well as his claim to have been constructively dismissed. They are serious claims involving allegations which, if established, amount to exploitation of a migrant worker. Without properly investigating Mr Singh's claims I cannot determine whether they have merit or whether they are, as the respondents portray, an opportunistic attempt to extract money from, and diminish the reputation of, an exemplary employer.

[20] In the Employment Court's analysis of the Authority's power to strike out in *Lumsden*, it noted Parliament had limited the Authority's power to dismiss a proceeding under clause 12A, without investigating it, to matters that were either frivolous or vexatious. The Court observed that, while the dismissal of cases with little or no merit appeared to have been contemplated at a relatively early stage of the legislative process, that was not reflected in the clause as it was enacted. It went on to state:

The rationale for limiting the scope for dismissal may well reflect the special characteristics of this jurisdiction and the underlying policy thrust of the Act, empowering employees to pursue claims and have them determined on their substantive merits, without undue regard to legalities, and in an efficient, non-technical manner. Dismissing claims without full investigation on broad grounds relating to an assessment of legal merits does not sit comfortably with this.⁵

[21] The Court concluded that the Authority's power to dismiss was limited and that the threshold was high stating:

Dismissing a claim is a serious step, and not one to be taken lightly. It cuts a claim off at the knees and, because of its draconian effects and having regard to the scheme and purpose of the legislation, is to be reserved for clear cut cases.

[22] This case does not fit into that "clear cut" category. While the respondents have made many criticisms as to the conduct of Mr Singh's representatives, and have asserted that he is acting in bad faith in bringing forward his claims, I find their rationale unconvincing and see

⁵ N1 at [38].

no reason at this stage in the proceedings to question Mr Singh's good faith in bringing his application to the Authority.

[23] Nor do I find any merit in the respondents' request for a stay of proceedings based on what they have described as an abuse of process by Mr Singh. Part of their claim relates to Mr Gill's anger over the manner of communications he has received from one of Mr Singh's representatives, which I understand that representative disputes. While the Authority expects representatives to act courteously towards each other, the conduct of advocates in their communications and interactions outside the Authority is not a matter over which the Authority has control. Nor do I consider it to be relevant to a consideration of the current application.

[24] The respondents' other reason for claiming abuse of process by Mr Singh is his tardiness in adhering to timeframes set by the Authority and the quality of the evidence he has provided. While there was some delay in Mr Singh providing documentation, he has generally complied with the Authority's directions and, when asked by the Authority to resubmit evidence in a more easily accessible manner, his representative did so within a reasonable timeframe.

[25] There has been no abuse of process as alleged by the respondents. Any questions there may be in relation to the documents provided by Mr Singh can and will be addressed through questioning and cross examination in the investigation meeting.

Conclusion

[26] There are no valid grounds on which to dismiss Mr Singh's application to the Authority or to order a stay of proceedings. The application by the respondents is accordingly dismissed. The investigation meeting will proceed as scheduled on 20 and 21 January 2021.

Costs

[27] The issue of costs is reserved and will be considered after the substantive matter has been heard and determined.

Trish MacKinnon
Member of the Employment Relations Authority