

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2022] NZERA 542

3132555  
3133799

BETWEEN            STONEWOOD GROUP  
                             LIMITED  
                             Applicant

AND                    VGP  
                             Respondent

3167861

BETWEEN            VGP  
                             Applicant

AND                    STONEWOOD GROUP  
                             LIMITED  
                             Respondent

Member of Authority:    Leon Robinson

Representatives:        Greg Bennett, advocate for Stonewood Group  
   Limited  
   Danny Gelb, advocate for VGP

Submissions:            17 June 2022 from Stonewood Group Limited  
   30 June 2022 from VGP

Date:                        21 October 2022

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**DETERMINATION OF THE AUTHORITY**

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[1]     This determination deals with an application to strike out VGP's statement in reply dated 2 March 2021 and his statement of problem dated 24 March 2022.

[2] I have issued a determination granting an interim non-publication order that VGP's name not be published.

[3] This determination has been issued outside the timeframe set out at section 174C(3)(b) *Employment Relations Act 2000* (the Act), where the Chief of the Authority considers exceptional circumstances exist. As permitted under section 174E of the Act, not all the evidence or information received has been recorded. Rather, this determination makes findings of fact and law and sets out conclusions on the issues necessary to dispose of the Applicant's claims.

### **Strikeout**

[4] The Authority has a power at any time in proceedings before it, to dismiss a matter or defence that it considers to be frivolous or vexatious<sup>1</sup>.

[5] I consider 'frivolous' to mean 'not having any serious purpose or value'. I consider 'vexatious' to mean 'causing or tending to cause annoyance, frustration or worry'.

[6] The threshold to strike out any claim is extremely high, and appropriately so. The courts and institutions are rightly slow to deny parties' substantive determinations of their claims.

#### *The grounds for strikeout*

[7] It is not easy to tell, but from what I can discern from the papers, it appears that Stonewood's application to strike out is on the grounds that the claim for unjustifiable dismissal has been lodged twice, that the statement in reply and/or the statement of problem in 3167861 is frivolous and vexatious, and that parts of the claim do not come within the jurisdiction of the Authority.

[8] There is a criticism that documents of the Human Rights Review Tribunal ought to be removed from I assume the Authority's file and investigations. I decline to direct the same because I consider those documents to be evidence or information quite properly before the Authority coming legitimately within the scope of the matters for investigation by the Authority. The Authority has very wide powers to receive evidence and information as it thinks fit.

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<sup>1</sup> Clause 12A Schedule 2 to the *Employment Relations Act 2000*.

[9] I do not agree that VGP's claim for unjustifiable dismissal has been lodged twice. It was lodged once by the statement of problem lodged in 3167861. It was the subject of the statement in reply from Stonewood. There the point is settled. There is no basis to dismiss the statement of problem on this ground. Nor do I consider any aspect of it to be frivolous or vexatious. The application to strike out the statement of problem by reason that the claim is frivolous or vexatious is declined. And I do not consider there is any other reason to strike out the statement of problem and the application to strike out the statement of problem in 3167861 is dismissed.

[10] Next I consider the statement in reply 3132555 and whether it ought to be struck out. There is a submission that it raises an unjustified termination and nothing else, and ought to therefore be struck out.

[11] The statement in reply sets out VGP's substantive response to the statement of problem. It makes clear that he denies the claims against him. I accept that there is no affirmative defence but I do consider an affirmative defence is required or essential – a denial of the claims against him is sufficient. It is enough that the pleading avers the substantive response to the claim as denials. It matters not that those denials are not accompanied with affirmative defences. That substantive response is that the claims are denied. I do not consider anything more is required.

[12] Accordingly, I do not consider there is anything defective or inappropriate by the statement in reply. I do not consider it to lack any serious purpose or value or that it causes or tends to cause annoyance, frustration or worry such that it ought to be struck out.

[13] For the reasons above, I decline to strike out the statement in reply. VGP's response to the statement of problem alleging claims against him is adequate and I endorse it as a satisfactory response in accordance with the Regulations of the Authority.

*The decision on strike out*

[14] I do not accept there is an abuse of process either by reason that there has been a duplicate lodging of a claim for unjustifiable dismissal. There has not been a duplicate lodging.

[15] Nor do I consider any of VGP's pleadings to be prolix or defective.

[16] I wholly fail to appreciate any suggestion that the Authority lacks jurisdiction to investigate VGP's claim that he was unjustifiably dismissed or his denials, bare as they may be, of any breach of employment duty owed to Stonewood. Those are matters within the exclusive jurisdiction of this Authority.

[17] The application to strike out by Stonewood lodged on 17 June 2022 is refused and is itself struck out.

### **Costs**

[18] I encourage the parties to resolve the matter of costs between them. If they cannot agree and a determination is required, Mr Gelb is to lodge and serve a memorandum on costs within 14 days of the date of this determination. Mr Bennett is to lodge and serve any reply memorandum within 14 days of being served with Mr Gelb's memorandum. I will not consider any memorandum outside of this timeframe without prior leave.

Leon Robinson  
Member of the Employment Relations Authority