

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 174  
3208999

BETWEEN

DELWYN BECKHAM  
Applicant

AND

METHODIST CHURCH OF  
NEW ZEALAND - TE HAAHI  
WETERIANA  
SUPERANNUATION  
TRUSTEE LIMITED  
Respondent

Member of Authority: Sarah Blick

Representatives: Applicant in person  
Rachel Scott, counsel for the respondent

Investigation meeting: On the papers

Determination: 26 March 2024

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Ms Beckham is pursuing personal grievances in the Authority. This preliminary determination concerns whether the Authority should, of its own motion, direct a further respondent to be joined to this matter.

**Background**

[2] On 10 December 2019, Delwyn Beckham's employment with Te Taha Māori o te Hāhi Weteriana o Aotearoa (TTM) came to an end by way of dismissal.

[3] It is common ground that Ms Beckham later raised a personal grievance in relation to her dismissal with the Commissioner of TTM, by letter dated 8 March 2020. The letter also said Ms Beckham had a personal grievance in relation to workplace bullying without providing any detail in relation to that allegation.

[4] On 29 April 2020 TTM's counsel, who also is counsel for the respondent Methodist Church of New Zealand - Te Haahi Weteriana Superannuation Trustee Limited (MCNZ), replied to Ms Beckham's letter. The reply denied Ms Beckham was unjustifiably dismissed and asserted Ms Beckham's grievances in relation to bullying and "institutional racism" were raised outside 90 days, unless she could point to instances which occurred on 9 and 10 December 2019, just prior to dismissal.

[5] On 12 February 2023 Ms Beckham lodged an application in the Authority pursuing her personal grievances, naming MCNZ as the only respondent. She has not since sought to name TTM as a respondent but is clear TTM was her employer.

[6] MCNZ raised the 90-day issue in its statement in reply. The Authority and parties agreed the 90-day issue could be determined on the papers, but this has shown not to be possible on the information provided by Ms Beckham to date.

[7] While setting this matter down for an investigation meeting at a recent case management conference, counsel for MCNZ cited s 114(6) of the Employment Relations Act 2000 (the Act) as preventing Ms Beckham from bringing grievance claims against TTM in the Authority, with more than 3 years having elapsed after the date she raised her grievance.

[8] The Authority has since proposed joining TTM as a respondent party prior to the investigation meeting, and sought the parties' comment on that proposed action.

### **The Authority's process**

[9] Ms Beckham has not commented on the proposal to join TTM and has not objected to the Authority determining this issue on the papers. MCNZ has provided brief comment on the proposal and consents to that matter being determined on the papers.

[10] As permitted by s 174E of the Act this determination has stated findings, expressed conclusions on issues necessary to dispose of the preliminary matter, and specified orders. It has not recorded all evidence received.

## **The issue**

[11] The issue for preliminary investigation and determination is whether TTM should be joined as a party.

## **Relevant law**

[12] Section 221 of the Act reads as follows:

### **221 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.

[13] The purpose of joinder rules has been said to be:<sup>1</sup>

...to secure the determination of all disputes relating to the same subject-matter without the delay and expense of separate proceedings. The general test is whether the proposed party will be directly affected by any order which may be made in the proceedings and the general rule is that it is for the plaintiff to decide who they will sue and for any person named as defendant to take striking-out proceedings if it is considered by them that there is no arguable cause of action.

## **Discussion**

[14] MCNZ has noted it understands that the Authority is not proposing to extend time for bringing an action against TTM under s 221(c) of the Act, and that the Employment Court's decision in *Blue Water Hotel Limited v VBS* would preclude that.<sup>2</sup> Further, MCNZ says if joined, TTM would become a party to an action more than three years after Ms Beckham raised her personal grievances.

[15] I do not see s 114(6) of the Act as an impediment the Authority exercising its discretion to direct TTM to be joined as a party. Joining TTM as a party at this stage of the matter will enable the Authority to more effectually dispose of it according to the substantial merits and equities of the case. I accordingly direct TTM to be joined.

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<sup>1</sup> *Auckland Regional Services Trust v Lark* [1994] 2 ERNZ 135 (CA) at 138.

<sup>2</sup> *Blue Water Hotel Limited v VBS* [2018] NZEmpC 128.

[16] The Authority observes that although Ms Beckham's statement of problem named only MCNZ as a respondent on the front page, she named TTM as her employer in the body of the statement of problem. The Authority will likely hear from the parties at the investigation meeting about whether the failure to name TTM on the front page of the statement of problem can be treated as an error or defect which can be amended or waived by the Authority pursuant to s 221(b) of the Act.

[17] For completeness, this determination does not purport to extend the time for bringing an action against TTM under s 221(c) of the Act.

### **Outcome**

[18] For the reasons given above, under s 221(a) of the Act, the Authority directs that Te Taha Māori o te Hāhi Weteriana o Aotearoa is to be joined as a second respondent to this matter.

[19] An investigation meeting is set down in June 2024 for the purpose of investigating preliminary matters. As recorded in my directions issued on 8 March 2024, the preliminary issues are the following:

- (a) whether Ms Beckham's actions are able to be brought against TTM in light of s 114(6) of the Act;
- (b) if the actions can proceed, whether Ms Beckham raised her personal grievances for unjustified disadvantage within the 90-day period;
- (c) if the grievance(s) were not raised in time, whether she is applying for leave to raise an unjustified disadvantage personal grievance outside the 90 days, and if so whether leave should be granted.

### **Costs**

[20] Costs are reserved.

Sarah Blick  
Member of the Employment Relations Authority