IN THE EMPLOYMENT COURT OF NEW ZEALAND
WELLINGTON

I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA

[2023] NZEmpC 70
EMPC 124/2023

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	JACOB PIETRAS Plaintiff
AND	TANYA VEGAR Defendant

Hearing:	On the papers
Appearances:	Joshua Pietras, counsel for plaintiff T Vegar, defendant
Judgment:	2 May 2023

JUDGMENT OF JUDGE J C HOLDEN

---

[1] This judgment deals with a challenge by Mr Jacob Pietras (Mr Pietras) to the Employment Relations Authority (the Authority) declining his request that it seek disclosure of information from Parliamentary Services.[1]

[2] The defendant, Ms Vegar, opposes the challenge; she says it is for Mr Pietras to correctly identify his employer, and that he should have done so before commencing his claim.

---

[1] For clarity, the plaintiff, Mr Jacob Pietras is represented by counsel, Mr Joshua Pietras.

Mr Pietras says he undertook 6 hours of work for Ms Vegar, but was not paid

[3] In June 2020, Mr Pietras was a university student looking for extra income.

[4] He saw a job advertised on the Student Job Search website. The job was for a fixed term role, collecting signatures for a parliamentary petition entitled "Stop Trading New Zealand Away".

[5] The position was advertised as being for approximately five hours at the rate of $18.90 per hour with a $50 bonus for every 500 plus signatures acquired.

[6] Mr Pietras emailed the contact person, who went by the name "Tanya Struck". She replied providing details about the petition and also advising that there would be a bonus of $100 for every thousand signatures achieved by the employee.

[7] Mr Pietras says that for two days in June 2020 he walked around central Wellington collecting signatures. He then sought payment for six hours of work but received no reply from "Ms Struck".

[8] The petition was lodged with Parliamentary Services and published online.

[9] With no response from Ms Struck, Mr Pietras contacted Student Job Search. It advised that the account that posted the advertisement had been registered with it under the name "Tanya Vegar".

[10] Mr Pietras says he only found one person on the electoral role with that name, and nobody called "Tanya Struck".

[11] Counsel for Mr Pietras contacted Parliamentary Services to see if they would provide details of the person who had lodged the petition, but that request was refused on privacy grounds.

Mr Pietras asked the Authority to seek identification evidence

[12] Mr Pietras then filed a claim against Tanya Vegar in the Authority. In that context, he asked the Authority to obtain identification evidence from Parliamentary Services.

[13] At that stage, the Authority Member declined to approach Parliamentary Services, noting that Ms Vegar had not been served with the statement of problem.

Mr Pietras initially succeeded in his claim against Ms Vegar

[14] As Ms Vegar was resident in Spain, Mr Pietras obtained an order from the Authority for substituted service. This entailed the documents being left at a property Ms Vegar owned in Auckland (but which was tenanted) coupled with the documents being emailed to Ms Vegar's father (who was said to manage Ms Vegar's property in her absence).

[15] Nothing was filed by Ms Vegar at that stage and the Authority proceeded to deal with the problem. It ordered Ms Vegar to pay Mr Pietras $122.47 for unpaid wages and holiday pay and to pay a penalty of $4,000, with half of that sum going to Mr Pietras.[2] In a further determination, the Authority awarded Mr Pietras costs of $2,534.31.[3]

The determination was then set aside

[16] Ms Vegar then applied to have the determination set aside and the investigation reopened on the basis she had no previous knowledge of the proceedings; that she was not Mr Pietras's employer, and she did not know him. The Authority granted the application to reopen the proceedings.[4]

[17] In a telephone directions conference with the Court, Ms Vegar advised that, although she had visited family in New Zealand last summer, she had resided in Spain for some years, where her focus was raising her young children. She claims to have

---

2 *Pietras v Vegar* [2021] NZERA 539 (Member Loftus) (substantive determination).
3 *Pietras v Vegar* [2022] NZERA 22 (costs determination).
4 *Vegar v Pietras* [2022] NZERA 558 (reopening determination).

no prior knowledge of Mr Pietras, or the matters engaged in these proceedings, and said that the whole matter is causing her a great deal of stress.

Mr Pietras again seeks Authority direction

[18] When the investigation was reopened, Mr Pietras again sought a direction from the Authority that it would require Parliamentary Services to disclose the identity of the person who lodged the petition. Mr Pietras says the information from Parliamentary Services would likely settle who Mr Pietras's employer was.

[19] Mr Pietras's request was declined by the Authority member at a telephone conference with the parties. The Authority now has set down an investigation meeting for 1 June 2023, with the main issue being whether Ms Vegar was, in fact, Mr Pietras's employer.

[20] The issues for the Court are:

(a) whether the declining of Mr Pietras's application was a determination by the Authority;

(b) if it was a determination, whether it is able to be challenged; and

(c) if Mr Pietras overcomes those two hurdles, should the Authority's determination be set aside, and orders made that Parliamentary Services provides the requested information to the Authority for the purposes of its investigation.

"Determination" is to be interpreted broadly

[21] As previously noted by the Court, what is a "determination" is to be interpreted broadly. The way in which a document from the Authority is described is not determinative of whether it is a determination.[5] Determinations can be procedural or

---

5 *Morgan v Whanganui College Board of Trustees* [2013] NZEmpC 55, [2013] ERNZ 460 at [22]; *McConnell v Board of Trustees of Mt Roskill Grammar School* [2013] NZEmpC 150, [2013] ERNZ 310 at [18].

substantive. They may deal with matters that otherwise might be dealt with in interlocutory judgments or minutes.[6]

[22] Mr Pietras made an interlocutory application in the Authority, and the application was declined. For the purposes of s 179 of the Employment Relations Act 2000 (the Act), there was a determination of the Authority.

Section 179(5) has to be read in context

[23] Section 179(5) of the Act prevents challenges to determinations about the procedure that the Authority has followed, is following, or is intending to follow. That sub-section is consistent with s 188(4) of the Act, pursuant to which it is not a function of the Court to advise or direct the Authority in relation to the exercise of its investigative role, powers, and jurisdiction; or the procedure that it has followed, is following, or is intending to follow.

[24] Those provisions have to be seen in the context of the Act, including the framework that has been established for resolving employment relationship problems. Within that framework, the role of the Authority 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.[7] The Authority Member drives the investigative process.

[25] The aim of Authority investigations is to have employment relationship problems resolved as efficiently and cheaply as possible.[8]

[26] Consistent with that framework, the general principle is that Authority proceedings should not be interrupted by challenges at a pre-determination stage.[9] The policy reasons for this are to increase speedy and non-legalistic decision-making, to keep costs down, and avoid delays. Access to justice considerations are dealt with in

---

6 *Morgan*, above n 5, at [15].
7 Employment Relations Act 2000, s 157(1); see also *FMB v TZB* [2021] NZSC 102, [2021] 1 NZLR 466, [2021] ERNZ 740 at [57].
8 *Gill Pizza Ltd v Labour Inspector* [2021] NZSC 184, [2022] 1 NZLR 1, [2021] ERNZ 1362 at [64(a)].
9 *H v A Ltd* [2014] NZEmpC 92, [2014] ERNZ 38 at [17].

the right of challenge or review once the Authority has made a final determination on the matter before it.[10]

[27] The Court can, however, consider determinations that have an irreversible and substantive effect. But it is not enough that a determination has an impact on the parties. Any determination will have some impact on the parties.[11]

The determination is procedural

[28] In the present case, Mr Pietras has made a claim that the defendant, Ms Vegar, was his employer and owed him certain monies. That is the employment relationship problem that the Authority is being asked to resolve. It is for the Authority to determine the best procedure to resolve that, including who it needs to hear from and what evidence it needs to obtain to resolve it. As noted, it is not for the Court to tell the Authority how it should go about investigating that employment relationship problem.

[29] At its heart, this challenge is Mr Pietras saying that the Court should stand in the shoes of the Authority and require Parliamentary Services to provide information to the Authority for the purposes of its investigation. That is not the role of the Court and would be contrary to the scheme of the Act, whereby the Authority investigates the employment relationship problem as it sees fit.[12]

[30] Mr Pietras points to the decision in *UXK v Talent Propellor Ltd* as supporting his argument that the Authority's decision here is capable of challenge.[13] However, *UXK* is clearly distinguishable and turned on its own particular circumstances, being where the Authority had ordered disclosure of medical information in circumstances where the disclosure would have an irreversible and substantive effect on the plaintiff.

[31] Here, if either of the parties is dissatisfied with the substantive determination, they can consider what further steps they wish to take, including by way of challenge

---

10 At [23].
11 *Fletcher v Sharp Tudhope Lawyers* [2014] NZEmpC 182 at [18].
12 Subject to Employment Relations Act 2000, s 157.
13 *UXK v Talent Propellor Ltd* [2022] NZEmpC 101, [2022] 1 ERNZ 396.

to the Court, which can be on a de novo basis. If the Authority finds the present defendant was not the person who had employed Mr Pietras, and Mr Pietras considers that to be incorrect, he may challenge the determination and have the Court consider the matter. There is no irreversible and substantive effect on Mr Pietras.

[32] The Court, therefore, has no jurisdiction to consider Mr Pietras's challenge and it is dismissed.

[33] As Ms Vegar has not incurred any legal expenses, there is no issue as to costs.

J C Holden
Judge

Judgment signed at 10.40 am on 2 May 2023