



Employment Court of New Zealand

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Alkazaz v Enterprise IT Limited no.3 [2021] NZEmpC 152 (15 September 2021)

Last Updated: 22 September 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU

[\[2021\] NZEmpC 152](#)
EMPC 100/2021

IN THE MATTER OF	an application for leave to extend time to file a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application to strike out a party
AND IN THE MATTER OF	an application to join parties
BETWEEN	AHMED ALKAZAZ Applicant
AND	ENTERPRISE IT LIMITED First Respondent
AND	SERVIAN NEW ZEALAND LIMITED Proposed Second Respondent
AND	SVN HOLDCO PTY LIMITED Proposed Third Respondent
AND	COGNIZANT TECHNOLOGY SOLUTIONS NEW ZEALAND LIMITED Proposed Fourth Respondent

Hearing: On the papers

Appearances: A AlKazaz, applicant in person
R Bryant, for Enterprise IT Ltd, Servian New Zealand Ltd and SVN Holdco Pty Ltd
J Warren and C M Evans, counsel for Cognizant Technology Solutions New Zealand Ltd

Judgment: 15 September 2021

INTERLOCUTORY JUDGMENT (NO 3) OF JUDGE J C HOLDEN

(Application to strike out a party and an application to join parties)

AHMED ALKAZAZ v ENTERPRISE IT LIMITED [\[2021\] NZEmpC 152](#) [15 September 2021]

[1] Mr AlKazaz wishes to challenge a determination of the Employment Relations Authority (the Authority), essentially in relation to remedies.¹

[2] Mr AlKazaz was successful in the Authority in a claim that he brought against Enterprise IT Ltd (Enterprise IT) for unjustifiable dismissal. As a result of the determination, Enterprise IT was ordered to pay Mr AlKazaz:

- (a) \$22,999.99 gross in lost wages; and
- (b) \$12,000 as compensation for humiliation, loss of dignity and injury to feelings.

[3] Enterprise IT also was ordered to pay a penalty of \$1,500, of which \$500 was to be paid to the Crown and \$1,000 paid to

Mr AlKazaz.

[4] In essence, Mr AlKazaz considers that he ought to have been awarded five months' lost wages instead of the three months awarded by the Authority; and he considers he ought to have been awarded an additional \$20,000 for humiliation, loss of dignity and injury to feelings.²

[5] As Mr AlKazaz did not file a challenge within the time provided in the [Employment Relations Act 2000](#),³ he has applied for leave to extend the time for filing a challenge. That application is yet to be resolved.

[6] Mr AlKazaz has now made the current applications to strike Enterprise IT out as a party in the proceedings and to add Servian New Zealand Ltd (Servian), SVN Holdco Pty Ltd (SVN) and/or Cognizant Technology Solutions New Zealand Ltd (Cognizant) as respondents.

¹ *AlKazaz v Enterprise IT Ltd* [2017] NZERA Auckland 400 (Member Craig).

2. Mr AlKazaz also says he is concerned about comments made by the Authority about him in its determination.

³ [Employment Relations Act 2000, s 179\(2\)](#).

[7] He also wishes to have Mr Bryant removed as counsel for Enterprise IT, saying he has not been properly instructed by Enterprise IT, but that does not form part of his applications.

[8] The reason Mr AlKazaz gives for wishing to strike out Enterprise IT is because he says that Enterprise IT has been placed in liquidation and that there is no agreement from the liquidator that proceedings against it can continue.⁴

[9] He wishes to join Cognizant and Servian on the basis that they are the sole owners of Enterprise IT and wishes to join SVN on the basis that the directorship of Enterprise IT has been transferred to SVN, as the liquidator of the company.

[10] Mr AlKazaz says that the applications are advanced in good faith with the purpose of increasing efficiency and avoiding further procedural complications. He appears to be concerned that a number of people that he considers potential witnesses or otherwise involved with his claim are now employed by Servian or Cognizant.

[11] The applications are opposed. Enterprise IT says there is no legal basis for it to be struck out of the proceedings and that there is no evidential foundation to support the strike out application. It says Mr AlKazaz's claims are speculative.

[12] It notes that it was Mr AlKazaz's employer at all relevant times and that it is still a registered and trading legal entity. It is not in liquidation, as alleged. On that basis, it says the strike out application is misconceived.

[13] The other respondents' opposition is essentially on the same grounds as those given by Enterprise IT. Cognizant acknowledges that SVN acquired Enterprise IT in November 2019 and that, in 2021, Cognizant acquired both SVN and Servian. However, it says that at the material time of Mr AlKazaz's employment, Cognizant and Enterprise IT were completely unrelated entities. In any event, Cognizant says ownership or shareholding in Enterprise IT is not a basis for joinder.

⁴ [Companies Act 1993, s 248\(1\)\(c\)\(i\)](#).

There is no basis to change the parties

[14] In order to enable the Court to more effectively dispose of any matter before it, according to the substantial merits and equities of the case, it may direct parties to be joined or struck out.⁵

[15] The difficulty here is that there is no suggestion from Mr AlKazaz that he was employed by anyone other than Enterprise IT. He has not suggested there was an employment relationship between him and the other respondents or identified any other basis that would found a claim against the other companies or give the Court any jurisdiction to make any order against any of them.

[16] The evidence before the Court also does not support Mr AlKazaz's claim that Enterprise IT is in liquidation. The documents he submitted do not say that; the change in ownership of the shares in Enterprise IT does not detract from its separate legal identity.

[17] Nor does the fact a number of Enterprise IT's employees are now with one of the other respondent companies change who Mr AlKazaz's employer was at the relevant time.

[18] As noted, the claim in the Authority was brought against Enterprise IT. If Mr AlKazaz wishes to challenge the remedies awarded by the Authority, his challenge must be directed to Enterprise IT.⁶

[19] While not strictly relevant to the outcome, Mr AlKazaz's claims that the steps proposed would increase efficiency are similarly unfounded. There is no suggestion that the employees named by Mr AlKazaz will be unavailable to give evidence because they are now with Servian, Cognizant or SVN. Nor does any change in shareholding or the organisational structure limit Enterprise IT's liability. There is no evidence that such changes would affect its ability to meet any increase in the award. There also is no basis for the Court to order or suggest that Mr Bryant cease to act for Enterprise IT.

5 [Employment Relations Act 2000, s 221\(a\)](#).

6 If leave is granted to extend time to file the challenge.

[20] In short, I agree with the position of the respondents that the applications are misconceived. They are accordingly unsuccessful.

Costs are reserved

[21] Costs are reserved. If they cannot be agreed between the parties, an application may be made by the respondents by way of memoranda filed and served within 20 working days of this judgment. Any response from Mr AlKazaz must be filed and served within a further 15 working days and any reply from the respondents must be filed and served within a further five working days. Any costs application then will be determined on the papers.

J C Holden Judge

Judgment signed at 11:30 am on 15 September 2021

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