

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 375
3038093

BETWEEN AHMED ALKAZAZ
Applicant
AND SPECTRUM CONSULTING
LIMITED
Respondent

Member of Authority: Vicki Campbell
Representatives: Applicant in Person
Aishleen Sluiters for Respondent
Investigation Meeting: On the Papers
Submissions Received: 29 October 2018 from Applicant
26 October 2018 from Respondent
Additional Information Received: 15 November 2018
Determination: 27 November 2018

DETERMINATION OF THE AUTHORITY

A. The application under matter number 3021491 is removed in its entirety to the Employment Court under s 178 of the Employment Relations Act 2000.

B. Costs are reserved.

Removal Application

[1] This is an application under section 178(2) of the Employment Relations Act 2000 (the Act) to remove the claims by Mr Alkazaz lodged under matter number 3021491

against Spectrum Consulting Limited in their entirety to the Employment Court without prior investigation by the Authority. Spectrum has opposed removal.

[2] Section 178(2) of the Act allows the Authority to remove a matter to the Court without investigating it if one of the following four grounds are established:¹

- a) an important question of law is likely to arise in the matter other than incidentally; or
- b) the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the court; or
- c) the court already has before it proceedings which are between the same parties and which involve the same or similar or related issues; or
- d) the Authority is of the opinion that in all the circumstances the court should determine the matter.

[3] By consent of the parties this matter has been determined on the papers currently before the Authority. As permitted by s 174E of the Act this determination has not recorded all the submissions received.

Employment Relationship problem

[4] Mr Alkazaz worked for Spectrum Consulting Limited from May to September 2017. During the employment relationship Spectrum became concerned about possible misrepresentations made by Mr Alkazaz during the recruitment process. That matter was addressed but then further concerns became apparent to Spectrum which resulted in the termination of Mr Alkazaz's employment.

[5] In his statement of problem lodged with the Authority on 20 October 2018 Mr Alkazaz claims one or more conditions of his employment were affected to his disadvantage as a result of unjustified actions by Spectrum. He also says his dismissal was unjustified, that Spectrum breached its statutory obligations of good faith, the Employment Relations Act 2000 (the Act) and the employment agreement between the parties.

¹ Employment Relations Act 2000 section 178(2).

[6] In its statement in reply Spectrum raised a jurisdictional issue. It claimed Mr Alkazaz did not raise a personal grievance for unjustified actions causing disadvantage within the requisite 90-day period. This was disputed by Mr Alkazaz who said he did raise his personal grievance within the statutory time frame. Mr Alkazaz applied for leave under s 114(3) of the Act in the event that he was found not to have raised his personal grievance within time.

[7] The preliminary matter regarding jurisdiction was determined on 23 August 2018.² I found the disadvantage grievances were not raised within the statutory timeframe and declined Mr Alkazaz's application for leave to raise the grievances outside the 90-day period.

[8] On 18 September 2018 Mr Alkazaz filed a challenge against the Authority's determination seeking a hearing de novo of the preliminary matters. That matter is not likely to be set down for hearing until sometime in 2019. In the meantime the parties will be attending a judicial settlement conference on or about 18 December.

Conclusion

[9] It is only necessary to establish one of the tests under s 178(2) of the Act in order for removal to be granted.³ Subsection (2)(c) of the Act gives statutory recognition to the desirability of having related proceedings disposed of together.

[10] Investigating the jurisdictional issues required me to review a large number of documents and witness statements. Through that process I am aware that the evidence relied on by Mr Alkazaz in proving his claims that he was disadvantaged in his employment, was unjustifiably dismissed, and the alleged breaches of good faith and of the employment agreement will be overlapping and related. On that basis the test in s 178(2)(c) of the Act has been met.

[11] In determining whether I should exercise my discretion I have considered whether there are any factors against removal. Spectrum has argued there is no certainty that if the application is not removed Mr Alkazaz will challenge the substantive determination and removing the matter will deprive the parties of their right to challenge the substantive matter de novo. Further, if the matter is removed

² *Alkazaz v Spectrum Consulting Limited* [2018] NZERA Auckland 267.

³ *Auckland District Health Board v X (No 2)* [2005] 1 ERNZ 551.

the parties will still require two separate hearings in the Court and therefore there will be no savings in costs.

[12] Mr Alkazaz is no longer resident in New Zealand. He will be required to return to New Zealand for any future hearings which will add to his costs and may contribute to delays depending on flight availability. No dates have yet been set for the preliminary matter, so it may be possible for the Court to address all issues at one hearing to reduce costs.

[13] I consider it would be more efficient and save the parties time and costs to have the entire proceeding heard together in the Court. The application under matter number 3021491 is removed to the Employment Court to hear and determine without the issues first being investigated by the Authority.

Costs

[14] Costs are reserved. Mr Alkazaz is unrepresented and I do not know whether he has incurred any legal costs in the preparation of his application and submissions in this matter. There is also the outstanding issue of costs in the preliminary matter where Spectrum was the successful party.

[15] The parties are invited to resolve the matter of costs between them. If they are unable to do so the parties shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. They shall have a further 14 days in which to file and serve memoranda in reply. All submissions must include a breakdown of how and when costs were incurred and be accompanied by supporting evidence.

[16] The parties could expect the Authority to determine costs, if asked to do so, on its usual “daily tariff” basis unless particular circumstances or factors require an adjustment upwards or downwards.

Vicki Campbell
Member of the Employment Relations Authority