

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Rebecca Darey (Applicant)
AND Primal Piercing Limited (Respondent)
REPRESENTATIVES Samuel Cuddon for Applicant
Andrew Cook for Respondent
MEMBER OF AUTHORITY Marija Urlich
CONSIDERATION OF PAPERS 15 February 2005
DATE OF DETERMINATION 15 February 2005

INTERIM DETERMINATION OF THE AUTHORITY

[1] This is an interim determination in respect of an application by the respondent, Primal Piercing Limited (“Primal Piercing”), for leave to reply/respond to an application lodged by the applicant, Rebecca Darey, in the Authority.

Background

[2] Ms Darey lodged an application in the Authority on 5 August 2004. The statement of problem attached to the application was served on Primal Piercing by courier on 6 August 2004.

[3] Primal Piercing did not file a statement in reply within the time period specified by regulation 8 of the Employment Relations Authority Regulations 2000. The Authority attempted to set up a conference call with the parties to discuss the failure to file a statement in reply and timetabling of an investigation meeting. Primal Piercing was unable to be contacted and the conference call did not proceed.

[4] By minute dated 23 September 2004 I advised the parties an investigation meeting into this employment relationship problem would be held on 8 March 2005 and that Primal Piercing would require leave of the Authority to defend Ms Darey’s application.

[5] This minute and notice of investigation meeting were served on Primal Piercing on 24 September 2004.

[6] On 11 November 2004 Mr Cook contacted the Authority to advise he had received instructions from Primal Piercing in relation to this matter, his client had given him a copy of the 23 September 2004 minute and attached notice of investigation meeting and requested a copy of the statement of problem.

[7] On 17 January 2005 a statement in reply and submissions seeking leave to defend were filed in the Authority on behalf of Primal Piercing.

[8] In accordance with a timetable set by the Authority Mr Cuddon filed submissions opposing leave.

Discussion

[9] Mr Cook submits leave to defend should be granted because Mr and Mrs Lockett, the directors of Primal Piercing advise they do not recall being served with the statement of problem and the first correspondence they received from the Authority was on 23 September 2004, that they did nothing about this correspondence because they assumed Mr Cook had received a copy also and Mr Cook contacted them in early November 2004 with regard to an unrelated matter whereupon Ms Darey's application was drawn to his attention. Steps were then taken to contact the Authority.

[10] The Authority's file on these proceedings records the courier received a signature "Lockett" upon delivery of the statement of problem to Primal Piercing's premises on 6 August 2004. I record further Primal Piercing has not provided any evidence to the Authority to support the submissions made on its behalf. On balance I find Primal Piercing was served with Ms Darey's application and took no reasonable steps to respond.

Determination

[11] I wish to determine this issue prior to the investigation meeting scheduled for 8 March 2005. The Authority and Ms Darey have been inconvenienced by the failure of Primal Piercing to comply with its statutory obligations. Leaving this issue until the investigation meeting and the possibility of an adjournment will cause further inconvenience.

[12] The Authority will be in a better position to conduct its investigation with the benefit of Primal Piercing's participation. It is in the interests of justice to grant leave as requested.

[13] The timetable for filing witness statements and supporting documentation as set out in minute of 23 September 2004 is extended to the respondent. All witness statements and supporting documentation should be filed and served by **4pm Tuesday 1 March 2005**.

Costs

[14] Costs are reserved.

Marija Urlich
Member of Employment Relations Authority