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De Bruin v Canterbury District Health Board [2012] NZEmpC 6 (25 January 2012)

Last Updated: 3 February 2012

IN THE EMPLOYMENT COURT CHRISTCHURCH

[\[2012\] NZEmpC 6](#)

CRC 2/12

BETWEEN KEES DE BRUIN Applicant

AND CANTERBURY DISTRICT HEALTH BOARD

Respondent

Hearing: on the papers - affidavit received 16 January 2012 - memorandum received 24 January 2012

Judgment: 25 January 2012

JUDGMENT OF JUDGE A A COUCH

[1] This decision concerns an application to extend time for the commencement of proceedings.

[2] Mr de Bruin is a nurse with more than 40 years experience. He was employed by the Canterbury District Health Board at Hillmorton Hospital until his dismissal on 4 April 2011. He pursued a personal grievance which was lodged with the Employment Relations Authority. The Authority gave its determination¹ dismissing Mr de Bruin's claim on 25 November 2011.

[3] With the support of his union, Mr de Bruin resolved to challenge that determination. Mr Andrew McKenzie, a Christchurch barrister, had represented Mr de Bruin before the Authority and was further instructed to prepare and file a statement of claim.

[4] [Section 179\(2\)](#) of the [Employment Relations Act 2000](#) provides that every challenge must be commenced within 28 days after the date of the determination in

question. In this case, the last day of that 28 day period was 23 December 2011.

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[5] Mr McKenzie had instructions and the filing fee by 9 December 2011. He subsequently prepared the statement of claim and sent it, together with the filing fee, to the Registrar of the Court by post on 23 December 2011. It was not received until the registry reopened on 4 January 2012.

[6] The effect of s 35 of the [Interpretation Act 1999](#) and the definition of

“working day” in s 29 of that Act is that 4 January 2012 was the next day after 23

December 2011 for the purposes of calculating statutory time periods. The statement of claim was therefore filed one day out of time.

[7] Mr McKenzie takes full responsibility for this error. He says that he incorrectly thought that the period between 20 December and 5 January was not to be counted and that, by ensuring the documents arrived at the Court on the first working

day of the new year, they would be in time. He also says that, in a newspaper article published on 9 December 2011, it was made known that Mr de Bruin would be challenging the Authority's determination.

[8] Counsel for the respondent, Ms Penny Shaw, has filed a memorandum in which she says that the Canterbury District Health Board does not consent to the application to extend time but will not oppose it.

[9] In all the circumstances, the interests of justice require that Mr de Bruin be given the opportunity to challenge the Authority's determination. His career is potentially at stake. While the error in timing ought not to have been made, it was inadvertent and has not prejudiced the respondent.

[10] The time for filing a statement of claim is extended. The draft statement of claim is to be regarded as having been validly filed today. The Canterbury District Health Board is to have 30 days after today in which to file a statement of defence.

Costs are reserved.

Signed at 12.30pm on 25 January 2012.

A A Couch
Judge

[1] [2011] NZERA Christchurch 185.

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