

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 43/09  
5137088

BETWEEN                      SHASHI KANTI DEVI  
                                         Applicant  
  
AND                                APNA NETWORKS LIMITED  
                                         Respondent

Member of Authority:        G J Wood  
  
Representatives:              David Collins for the Applicant  
                                         Dawud Bahadur for the Respondent  
  
Investigation Meeting:        11 February 2009 at Auckland  
  
Determination:                11 February 2009

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**DETERMINATION OF THE AUTHORITY ON APPLICATIONS TO  
RESPOND OUT OF TIME AND FOR AN ADJOURNMENT**

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1. The respondent (APNA) had failed to lodge a statement in reply within time and had been informed by Minute of the previous Member that it would need to apply for leave and could attend the investigation meeting to do so, or do so at any earlier time. The applicant, Ms Devi, met her obligations by providing a witness statement about her allegedly unjustified dismissal and underpayments.
2. At the commencement of the meeting Mr Dawud Bahadur, APNA's company secretary, attended and sought leave for it to respond and for the meeting to be adjourned. He gave evidence that the Authority's correspondence had been left unattended on his desk, and that he was away from work until 19 January 2009. From that time he had been ill, had had other pressing matters to attend to and believed from the Member's minute that an application could be made on the day. He also gave evidence that APNA had substantive defences to Ms Devi's claims and may have grounds for a counterclaim if loans made to Ms Devi have not been repaid. He also gave evidence that the other senior staff of APNA were similarly engaged on pressing matters.
3. Ms Devi opposed both applications on the grounds that APNA have plenty of staff able to deal with the matter and have had plenty of opportunity to engage with her representative and the Authority. She had incurred lost pay of \$80, which APNA reimbursed her for at the meeting.
4. I conclude that APNA's lack of response constitutes a failure to facilitate the Authority's investigation to date and has potential consequences under ss. 181 and 182 accordingly. Its lack of response has been unacceptable. Its method of dealing with important legal matters (just leaving them on someone's desk

who is on extended leave) is unprofessional. In effect it has shown a cavalier attitude towards Ms Devi's employment relationship problem.

5. In the interests of justice I grant the applications however, for the following reasons:
  - otherwise APNA would not be able to defend the matter at all, yet it may have substantive defences;
  - I give Mr Bahadur the benefit of the doubt that he has only been able to attend to the matter very recently;
  - There was some ambiguity about when APNA should apply for leave in the Member's Minute; and
  - APNA has paid Ms Devi's expenses as a result of there being an adjournment.
6. I also make the following directions:
  - The investigation meeting is adjourned until 10am 13 May 2009;
  - APNA is to file a statement in reply and any counterclaim over loans by 4pm 25 February;
  - Written statements on behalf of APNA are to be filed by 4pm 8 April, by witnesses who must all attend the meeting, including Messrs Shah and Mohammed;
  - Any statements made will be disregarded in their entirety if the witness does not attend the meeting in person; and
  - Ms Devi may make a statement in reply by 4pm 29 April.

**GJ Wood**  
**Employment Relations Authority Member**