

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2022] NZERA 397
3144141

BETWEEN STEPHEN ELLIOT
 Applicant

AND BAY TROLLEYS LIMITED
 Respondent

Member of Authority: Claire English

Representatives: No appearance for the Applicant
 Jol Bates, counsel for the Respondent

Investigation Meeting: 17 August 2022 at Napier

Submissions received: None
 17 August 2022 from Respondent

Determination: 18 August 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Mr Stephen Elliot filed an application raising personal grievance claims of unjustified disadvantage and unjustified dismissal against the respondent.

[2] The respondent takes the position that Mr Elliot was never employed by it, and in any event, had not raised his personal grievances within the required 90 day period, being some 18 months late in raising his claims with the respondent.

[3] A case management conference call was held with the parties. Mr Elliot attended. The respondent was represented by counsel. At this call, it was identified that the issues for investigation and determination were the preliminary questions as to

whether the applicant was an employee of the respondent, and whether the applicant's personal grievance claim was raised in time. An investigation meeting was set down for 17 August 2022 at Napier, with the agreement of both parties. Timetabling orders for the provision of witness statements and other evidence by both parties were also made, and confirmed in writing.

[4] Mr Elliot did not file any evidence. The file shows that the Authority Officer responsible for the file contacted Mr Elliot on 4 occasions to remind him of this. On one occasion, Mr Elliot replied by email, using strong language, to indicate he would not be providing further responses.

[5] In addition, both parties were sent a Notice of Hearing, setting out (among other things) the date, time, and venue for the investigation meeting.

[6] Mr Elliot failed to attend the investigation meeting. Counsel for the respondent did attend, and in Mr Elliot's absence, submitted that the matter should be dismissed, and costs reserved.

The Authority's investigation

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

[8] I am satisfied that Mr Elliot was aware of the scheduled investigation meeting, as he attended and participated in the case management conference where the date and venue for the investigation meeting were set. I am also satisfied that he received the notice of hearing confirming this, which was sent to the email address he had provided as his address for service, and which he used to contact the Authority as noted above.

[9] Contained in the notice of investigation meeting, which I am satisfied Mr Elliot has received, is advice that if the applicant does not attend the investigation meeting the matter may be dismissed.¹

¹ Note 1 to Form 8 of the Employment Relations Authority Regulations 2000.

[10] Given that, the absence of either notification or explanation of Mr Elliot's absence, along with his failure to respond to multiple approaches from the Authority, I conclude it appropriate I apply the regulations and dismiss the application for lack of prosecution.

Conclusion

[11] For the above reasons, I dismiss Mr Elliot's application.

Costs

[12] I am satisfied that Mr Elliot was put on notice that, in the event that he did not attend the investigation meeting, costs might be awarded against him². Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[13] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.³

Claire English
Member of the Employment Relations Authority

² See also Note 1 to Form 8 of the Employment Relations Authority Regulations 2000.

³ Please note the Authority's Practice Note on costs, effective from 2 May, available at <https://www.era.govt.nz/assets/Uploads/practice-note-2>