

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA76/09  
5116643

BETWEEN CHRISTOPHER FORD and  
CHARMAINE PATTISON  
Applicants

AND LEE MANSON  
Respondent

Member of Authority: James Crichton

Representatives: Tom Stephens, Counsel for Applicants  
Carla Jones, Advocate for Respondent

Submissions received: 5 May 2009 from Applicants  
12 May 2009 from Respondent

Determination: 9 June 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Mr Ford and Ms Pattison, as the applicants in this matter (the applicants) make application to the Authority for an investigation to be reopened and the respondent (Mr Manson) opposes that application.

[2] The short factual position is that Mr Manson brought a claim of unjustified dismissal against the present applicants (Mr Ford and Ms Pattison) on 16 May 2008. An investigation meeting took place on that application on 11 August 2008 and a determination issued on 13 August 2008.

[3] In that determination, the Authority concluded that Mr Manson had suffered a personal grievance by reason of having been unjustifiably dismissed and awarded remedies in that regard. Mr Ford and Ms Pattison did not appear at the investigation meeting despite the earnest efforts of the Authority support staff to engage with them.

[4] Not only did the Authority support staff take all proper and usual steps to engage with Mr Ford and Ms Pattison, but so also did Mr Manson's advocate in the period leading up to the matter being dealt with in the Authority. The support officer

at the Department of Labour's Mediation Service also sought, without success, to engage with Mr Ford and Ms Pattison.

[5] Now, some seven months later, the applicants seek to reopen the matter. The Authority convened a telephone conference with the parties and set a timetable in which submissions for and against the application to reopen were to be filed and served and those submissions have now come to hand.

### **Issues**

[6] The application to reopen proceeds on the following basis:

- (a) The explanation for the applicants' failure to engage with the Authority's process;
- (b) Whether there was a prima facie defence to the original proceedings;
- (c) Whether further delay would cause irreparable harm to Mr Manson; and
- (d) Whether a refusal to grant the application to reopen would cause a miscarriage of justice.

[7] The submissions in reply from Mr Manson's advocate helpfully proceed on the same basis and so it is convenient for the Authority to consider the matter under each of these heads.

### **The lack of response**

[8] The applicants say that they have been under stress for a long time, that there have been deaths in the families and that Mr Ford has intellectual shortcomings which mean he is less able than others to manage his affairs.

[9] Mr Manson quite properly accepts that had he known that the applicants had suffered various family bereavements, then he would readily have stood back for a period to enable the applicants to grieve before requiring them to address his issues. Mr Manson makes the point that all the applicants need have done was advise either his advocate or the Authority of the position in order to get a stay. No such advice was ever provided.

[10] In respect of the contention that Mr Ford, as the employer, has some intellectual challenges and must rely on others, Mr Manson refers to the self-evident fact that Ms Pattison was in fact a partner in the business at the time that the events complained of occurred and it is not suggested that Ms Pattison has any intellectual challenges. Indeed, the evidence heard by the Authority suggested that Ms Pattison was intimately involved in the management of the business.

**Is there a prima facie defence?**

[11] Although Mr Stephens, for the applicants, contends that there is a prima facie defence, he himself quite properly concedes *that the procedure adopted by Christopher Ford in effecting that dismissal is unacceptable*. That is indeed the position. Mr Stephens argues that the dismissal was in fact for redundancy, but if that were the position then the procedure is even more unacceptable. There was, in truth, no procedure at all for the dismissal and that is, it seems, conceded by the applicants. On that basis then, it is difficult to see how there can be a prima facie defence.

[12] What is true is that the applicants complain about the award made. They say the compensation figure is too high and that the wage figure is wrong. Neither of those submissions would come as any great surprise emanating as they do from the unsuccessful party. In fact, the compensation figure reflected the evidence heard by the Authority about the extent of hurt, humiliation and injury to feelings (as the statute requires), and the wages awarded reflect the evidence given on oath by Mr Manson as to the wages that he lost consequent upon the dismissal.

**Will the delay cause Mr Manson irreparable harm?**

[13] Mr Stephens submits that as Mr Manson has received nothing to date, a further short delay will not disadvantage him. That argument begs the question that Mr Manson has been put to further trouble and expense opposing the present application to reopen and has had to incur additional expense in proceeding against the applicants to recover the awards made by the Authority against them. Indeed, it is difficult to escape the conclusion that the genesis for the application to reopen is simply the fact that the applicants are being pressed in the civil Courts for payment of the sums awarded against them by the Authority.

**Was there a miscarriage of justice?**

[14] The applicants contend that Mr Manson misled the Authority and that the Authority ought to hear from them before *fixing* its decision. The factual position is that the Authority made its decision on 13 August 2008 and there can be no sense in which the decision is not already fixed. If, as the applicants contend, Mr Manson misled the Authority, then that is a particularly serious allegation which goes to the heart of the justice system. Mr Manson gave his evidence on oath and, as the determination makes clear, he impressed the Authority *as an honourable and truthful man ... who ... gave his evidence carefully and thoughtfully*.

[15] Furthermore, while Mr Stephens urges on the Authority the observation that he has contacted an individual and a former client of the applicants who apparently spoke poorly about Mr Manson, the evidence the Authority heard was that Mr Manson had no difficulty getting a position with another driving company (albeit at a lower rate of pay), working for the same former client of the applicants.

**Determination**

[16] In the result, I am not satisfied that the submissions of the applicants and the affidavits in support disclose *a very real possibility* of a miscarriage of justice or indeed any evidence of a miscarriage of justice: *Cavalier Carpets of New Zealand Ltd v. New Zealand Woollen Mills Union* [1989] 2 NZILR 378. It is conceded that the dismissal was procedurally unfair (and properly so), and while there is dispute about the quantum of the awards made, the substance of the claim for a miscarriage of justice is thin indeed.

[17] On the only point where the applicants identify a specific area of alleged deficiency by Mr Manson (the contention that the applicants' former client thought poorly of Mr Manson), that evidence is specifically countered by evidence heard by the Authority in its original investigation meeting.

[18] It follows that I am not satisfied that this is a matter where the Authority ought to reopen an investigation. That being the position, the applicants' application fails in its entirety.

**Costs**

[19] Costs are reserved.

James Crichton  
Member of the Employment Relations Authority