



Employment Court of New Zealand

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Grocott t/a Fluffy's Roof Coatings v Parratt [2013] NZEmpC 21 (22 February 2013)

Last Updated: 8 March 2013

IN THE EMPLOYMENT COURT CHRISTCHURCH

[\[2013\] NZEmpC 21](#)

CRC 28/12

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

BETWEEN MARK GROCOTT trading as FLUFFY'S ROOF COATINGS Plaintiff

AND MILLIN JAMES PARRATT Defendant

Hearing: telephone conference 22 February 2013

Appearances: Robert Thompson, advocate for the plaintiff

Philippa Tucker, counsel for the defendant

Judgment: 22 February 2013

JUDGMENT OF JUDGE A A COUCH

[1] The defendant was employed by the plaintiff. In December 2010, the employment relationship came to an end. The defendant alleged he had been dismissed and that the dismissal was unjustifiable. He also pursued a claim for arrears of wages. The Authority determined both claims in his favour.^[1] The plaintiff challenged the whole of the Authority's determination and sought a hearing de novo. At that stage, the plaintiff was represented by Mr Thompson.

[2] Following a directions conference held on 17 October 2012, I issued a minute in which I said:

[5] As in many cases where the plaintiff in a challenge was the respondent in the Authority, the standard form of pleadings required by the [Employment Court Regulations 2000](#) does not give the Court a clear picture

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of the parties' positions. I therefore direct that amended pleadings be filed and served as follows:

a) The defendant is to file and serve by **4pm on Wednesday 31**

October 2012 a document entitled "Defendant's Claim" in

which the claims made by the defendant and the remedies sought are affirmatively pleaded. That document should comply with the requirements of regulation 11.

b) The plaintiff is to file and serve by **4pm on Wednesday 14**

November 2012 a document entitled "Plaintiff's Answer"

which should respond to the defendant's claim in the manner

required by regulation 20.

[3] The defendant duly filed the defendant's claim as directed. The plaintiff failed to file the plaintiff's answer and still has not done so. The only document the Court received was a memorandum from Mr Thompson dated 12 November 2012 advising that he was no longer instructed by the plaintiff.

[4] On 29 November 2012, the defendant filed an application to strike out the proceedings on the grounds that the plaintiff had failed to comply with my directions. A copy of that application and an affidavit in support of it were served on the plaintiff personally on 15 December 2012.

[5] Since then, the plaintiff has taken no steps. In particular, he has still not filed the plaintiff's answer or given notice of any intention to oppose the application to strike out.

[6] I held a telephone conference today at which the plaintiff was once again represented by Mr Thompson. He confirmed that the plaintiff had received the application to strike out and was aware of the consequences which might flow from it. On the instructions he had received from the plaintiff, Mr Thompson was unable to explain the plaintiff's default or to advance any good reason why the proceedings ought not to be struck out.

[7] Judges of this Court are aware of the difficulties faced by litigants in person and frequently allow a good measure of latitude to parties who struggle to comply with the procedure of the Court. The overriding consideration must always be to achieve an outcome which is just and in accordance with equity and good conscience. That requires the interests of both parties to be considered. In this case,

the point has been reached where the interests of the plaintiff in having a judicial hearing of the matter must give way to the interests of the defendant to be relieved of the stress and uncertainty of the current proceedings together with the ever increasing costs of defending them.

[8] The proceedings are struck out for want of prosecution.

[9] The defendant is entitled to an award of costs. A memorandum should be filed and served within 10 working days after today. If the plaintiff wishes to be heard on costs, any memorandum in response should be filed and served within a further 10 working days.

A A Couch
Judge

Signed at 5.00 pm on 22 February 2013.

[\[1\]](#) [2012] NZERA Christchurch 127.

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