

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 176
3272560

BETWEEN ANDREW SHANE JACKSON
Applicant

A N D NCR AUSTRALIA PTY LIMITED
Respondent

Member of Authority: Philip Cheyne

Representatives: Matt Boniface, counsel for the Applicant
Simon Martin, counsel for the Respondent

Investigation Meeting: 27 March 2025

Date of Determination: 27 March 2025

ORAL DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In a statement of problem, Andrew Jackson describes his problem as “Illegal termination of Employment”.

[2] NCR Australia Pty Limited says that it never employed Mr Jackson. It says that Mr Jackson’s employer was another company, which provided it with labour hire services.

[3] Despite a direction to mediation, the matter was not resolved.

The Authority's initial directions

[4] By the time of the first case management conference, Mr Jackson was legally represented. Counsel confirmed that Mr Jackson would say that NCR was a controlling third party, so his claim relied on s 103B and s 115A of the Employment Relations Act 2000.

[5] I drew counsel's attention to *Riddler v Meridian Energy Limited*, a case where the Employment Court considered the application of the law about controlling third parties.¹ Principles set out there appeared to create an obstacle for Mr Jackson's application as currently formulated. Counsel advised that he did not have instructions about a personal grievance claim against Mr Jackson's employer.

[6] 27 March 2025 was reserved for an investigation meeting, if the matter proceeded. Meantime, counsel was to obtain instructions and revert on matters regarding the claim against a controlling third party and several other procedural issues raised by Mr Jackson's statement of problem.

[7] Absent further contact from counsel for Mr Jackson, on 23 December 2024 a timetable was set for Mr Jackson to take specific steps if his employment relationship problem remained to be investigated and determined.

[8] Mr Jackson did not comply with the directions.

An investigation meeting was scheduled

[9] The 23 December 2024 directions foreshadowed the Authority's intention to determine the matter without an investigation meeting solely based on the file information then available to the Authority, if Mr Jackson did not comply with the timetable directions.

[10] Despite Mr Jackson's non-compliance, notice of today's investigation meeting was served on Mr Jackson and NCR on 14 February 2025.

[11] On 20 February 2025, NCR drew to the Authority's attention the earlier expressed intention to determine matters on the papers.

¹ *Riddler v Meridian Energy Ltd* [2023] NZEmpC 87.

[12] On 25 February 2025, I acknowledged the point but considered that proceeding with the scheduled investigation meeting was the better option given that the notice of investigation meeting had been served on Mr Jackson.

[13] The 14 February 2025 notice, NCR's 20 February 2025 message and the 25 February 2025 directions were all served on Mr Jackson.

[14] Mr Jackson did not respond to those communications.

Mr Jackson withdrew his application

[15] Yesterday, counsel for Mr Jackson advised that he had written to Mr Jackson but had not received instructions. He expressed the view that the matter ought not proceed to an investigation meeting until he had received instructions.

[16] In response, counsel for NCR considered that the position remained unchanged: Mr Jackson had not taken the steps required, there appeared to be no prospect that he would do so, the claim as formulated had no prospect of success and the investigation meeting should proceed.

[17] The Authority then advised both counsel that the investigation meeting would proceed. Assuming that the message from counsel for Mr Jackson was an application for an adjournment, it was declined.

[18] In response, counsel for Mr Jackson expressly sought an adjournment, but also stated that given the Authority's reluctance to adjourn the matter, the application must be withdrawn. As counsel said, the alternative was that the matter would be dismissed because of Mr Jackson's failure to appear.

[19] Regulation 14 of Schedule 2 to the Employment Relations Act 2000 permits a party to withdraw a matter at any time when it is before the Authority.

[20] I take counsel's communication at 3.27 pm on 26 March 2025 as Mr Jackson exercising his right to withdraw his application, prior to today's investigation meeting.

Costs

[21] Costs are reserved.

[22] If NCR seeks costs, it must lodge and serve a memorandum in support within 28 days of this determination. Mr Jackson may then lodge and serve a memorandum in reply within a further 14 days.

Philip Cheyne
Member of the Employment Relations Authority