

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2014] NZERA Christchurch 54
5389235

BETWEEN DAVID JOSEPH MURRY
Applicant

A N D ATAMAI DEVELOPMENT
LIMITED
Respondent

Member of Authority: Helen Doyle

Representatives: Brian Nathan and Stephen Galbreath, Counsel for
Applicant
Jack Santa Barbara, Advocate for Respondent

Memoranda Received: 7 April 2014 from Applicant
8 April 2014 from Respondent

Date of Determination: 8 April 2014

**PRELIMINARY DETERMINATION OF THE AUTHORITY ON
ADJOURNMENT REQUEST**

A The application for an adjournment is declined.

Adjournment request

[1] This matter is set down for an investigation meeting in Nelson on 10 and 11 April 2014 if required.

[2] By memorandum dated 7 April 2014 the solicitors for the applicant requested a direction that the meeting scheduled for 10 and 11 April 2014 be adjourned. This is on the basis that Mr Murry has instructed counsel that he cannot afford the costs of travelling to New Zealand from Hawaii where he lives for the investigation meeting and is unable to travel due to family commitments with three young children and he has just started a new job.

[3] Atamai Development Limited (Atamai) by its director, Jack Santa Barbara oppose the adjournment request on the basis that this is the second such request, both having been made at the 11th hour, for an adjournment Mr Santa Barbara refers to a pattern of procrastination and questions the seriousness of Mr Murry to have the matter resolved.

Process of this matter

[4] On 16 May 2013 the statement of problem from Mr Murry who resides in Hawaii was lodged with the Authority.

[5] On 1 July 2013 a statement in reply was lodged with the Authority, an extension having been granted because Mr Santa Barbara was in Canada on emergency leave and then the company sought legal advice.

[6] On 2 July 2013 a support officer from the Authority provided the statement in reply to Mr Murry by way of an attachment to an email. She advised in the email amongst other matters that if the matter proceeds to an investigation meeting then Mr Murry would be required to attend to give evidence in New Zealand.

[7] By email dated 4 July 2013 Mr Murry responded to the support officer and advised amongst other matters he would have no problem returning to New Zealand if necessary for an investigation meeting. Mr Murry was not represented at that time.

[8] A case management conference call was held with the Authority on 29 July 2013. Atamai was represented by counsel. Mr Murry attended in person. During the telephone conference the Authority discussed the issue of relevant documents/disclosure and with the agreement of the parties set the matter down for an investigation meeting in Nelson on 21 and 22 November 2013. It also set a timetable for lodging statements of evidence. On 14 October 2013 the Authority was advised by Philip Bellamy, solicitor at Duncan Cotterill that the firm had now been instructed by Mr Murry.

[9] On 18 November 2013 Mr Bellamy emailed the Authority and advised that Mr Murry was not available for the investigation meeting commencing 21 and 22 November 2013. The reason provided was that whilst he was at the airport preparing to leave his wife had an accident. Mr Bellamy advised that he had been told the earliest Mr Murry could come to New Zealand is late January by which time his

wife should have recovered from her injuries and he will have arranged another period of work.

[10] The Authority advised by email dated 18 November 2013 that it would await receipt of the medical certificate. There was a difficulty with providing the medical certificate. For reasons of confidentiality I will not go into that matter, save as to say that Mr Bellamy provided quite clear details of what had happened to Mr Murry's wife. This meant that Mr Murry felt he had little option but to remain and look after his wife and children.

[11] Mr Murry did provide copies of the confirmation that flights had actually been booked from Honolulu to Nelson by way of provision of his e-tickets. He also advised that he had received a partial refund from Air New Zealand for the cancelled flights.

[12] The Authority duly adjourned the investigation meeting set down for 21 and 22 November 2013.

[13] A telephone conference was held with counsel on 4 December 2013 at which time two sets of dates were proposed for an investigation meeting in February and/or April 2014. The parties confirmed that the April dates would be convenient.

[14] On 12 March 2014 the solicitor for Atamai advised that he was no longer acting for the company which was now self-represented. The Authority was also advised on that same day that Mr Bellamy was no longer at the firm of Duncan Cotterill and that the file would be dealt with by Mr Nathan and Mr Galbreath. At that point in time the Authority had statements of evidence and relevant documentation and the file was ready for the scheduled meeting.

[15] By memorandum of counsel dated 2 April 2014 Mr Nathan and Mr Galbreath on behalf of Mr Murry requested a direction that the applicant attend the hearing on 10 and 11 April by telephone conference. There were two main reasons for this put forward. The first was the cost that Mr Murry would incur and the time away from his family and his new job if he had to attend an investigation meeting. The second was that the respondent was no longer represented and attempts to contact the respondent had yielded no response and there was a genuine concern that the respondent may not appear at the investigation meeting.

[16] The Authority asked a support officer to confirm with Mr Santa Barbara whether or not there would be an appearance on behalf of Atamai.

[17] Mr Jack Santa Barbara by email dated 3 April 2014 advised the Authority that *we are all planning to attend the scheduled session April 10. We will be representing ourselves.* Mr Santa Barbara opposed Mr Murry attending by way of telephone conference because of the complexity of issues involved - *we do not believe this will be a constructive way of dealing with the matter.*

[18] The Authority advised counsel for Mr Murry and Mr Santa Barbara on 3 April by way of email that the application for the applicant to attend at the investigation meeting on 10 and 11 April 2014 by way of telephone conference was not granted. One of Mr Murry's concerns had obviously been allayed. There would be an appearance for the respondent. Further the issues for the Authority had a degree of complexity and there is on the face of the statements of evidence dispute about some of the material facts. In those circumstances the Authority did not consider attendance by telephone of Mr Murry would be appropriate.

[19] I further note that there had never been any suggestion before this that Mr Murry would not attend in person at either the first adjourned meeting scheduled for November 2013 or the investigation meeting scheduled for 10 and 11 April 2014.

[20] The next communication received from counsel for Mr Murry was its memorandum seeking an adjournment.

Determination

[21] Mr Murry has been on notice from an early stage that he would be required to attend and give evidence at an investigation meeting.

[22] There has already been one adjournment at his request of an investigation meeting set down in November 2013. There was no medical certificate provided at that time as would ordinarily be the case to support the events that Mr Murry described. Notwithstanding that the Authority was prepared to grant an adjournment and relied in doing so on the accident and injuries as described by Mr Murry to his solicitor and issues that caused for childcare and care for his wife. At that time the main reliance for an adjournment was placed on the evidence that there had been purchase of air tickets from Honolulu to Nelson via Auckland.

[23] One of the reasons put forward again by Mr Murry to support a further adjournment is that he has the care of his three children. I do not accept that as a valid reason. Mr Murry has known of this date for months and the need to make suitable arrangements. The Authority accepted in November 2013 that Mrs Murry was not able to undertake that role whilst Mr Murry was in New Zealand because of her accident but there is no suggestion that situation continues still. If it has then the Authority would have expected to have been advised a long time ago and would have required medical evidence.

[24] The other matter put forward by Mr Murry is that he is unable to afford the cost of travelling to New Zealand. There is no financial information provided to verify that claim. In November 2013 Mr Murry advised that he had received a partial refund when he cancelled his travel for the purpose of attending the first investigation meeting. He accepted dates that were four months out from the telephone conference on 4 December 2013. I find that with the partial refund and knowledge of the dates from early December 2013 he has had time to make suitable financial arrangements. I do not find that to be a valid reason for an adjournment in those circumstances.

[25] The final reason is that Mr Murry has recently obtained a new job. There was however plenty of time for Mr Murry to advise his new employer of a firm commitment that existed from early December 2013 to travel to New Zealand to attend at an investigation meeting in April 2014. I do not find that a valid reason to grant an adjournment.

[26] The application for an adjournment is declined.

[27] The meeting scheduled for 10 and 11 April 2014 in Nelson will proceed. If Mr Murry does not attend at that meeting he should be aware of the possibility his proceedings may be dismissed.

Helen Doyle
Member of the Employment Relations Authority