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Paki v Panel Holdings Limited AC 59/07 [2007] NZEmpC 151 (3 December 2007)

Last Updated: 15 December 2007

IN THE EMPLOYMENT COURT

AUCKLANDAC 59/07ARC 54/07

IN THE MATTER OF a challenge to a determination of the Employment Relations Authority

BETWEEN PAANIA PAKI

Plaintiff

AND PANEL HOLDINGS LIMITED

Defendant

Judgment: 3 December 2007

INTERLOCUTORY JUDGMENT OF CHIEF JUDGE GL COLGAN

[1] This interlocutory judgment deals with two issues. The first is whether Paania Paki should be entitled to prosecute her challenge to the determination of the Employment Relations Authority by a hearing de novo. The second issue deals with the application for leave to withdraw as counsel by Ms Paki's lawyer.

[2] After an investigation meeting on 5 July 2007 at which Panel Holdings Limited was represented by counsel, but there was no participation by Ms Paki, the Authority issued its determination on 3 August 2007. Panel Holdings' claim against Ms Paki alleged that she had breached their employment agreement by giving insufficient notice of her resignation and having entered into a number of unauthorised transactions on behalf of the company but for which it received no benefit. The company also alleged that Ms Paki had altered company records and removed, improperly, company documents from its premises. The company sought penalties and reimbursement of its losses.

[3] The Authority directed Ms Paki to pay Panel Holdings \$32,713.68 for its losses that the Authority was satisfied were caused by her breaches. It also imposed maximum penalties of \$5,000 in respect of each of three categories of breach, being a total of \$15,000, half of which was to be paid to the company. Although Ms Paki had claimed to the Authority that she had been dismissed unjustifiably, her non-attendance at the investigation meeting caused her claim to be dismissed. The Authority reserved questions of costs but set a timetable for submissions.

[4] On 31 August Ms Paki filed a notice of challenge to the Authority's determination, claiming that she had been constructively dismissed unjustifiably and denying that she had breached her employment agreement as found by the Authority. Ms Paki claimed compensation including \$7,430.64 for holiday pay and sick leave, and \$8,315.24 for lost wages. At the conclusion of what can only be described as a minimalist statement of claim, Ms Paki elected "*a full hearing of the entire matter (a hearing de novo)*".

[5] In response to a request from the defendant's solicitors that it not be required to file a statement of defence, I considered that the Authority's determination caused [s181](#) of the [Employment Relations Act 2000](#) to be engaged and, in particular, that Ms Paki may not have participated in the Authority's investigation in a manner that was designed to resolve the issues involved. I requested the Authority to provide the Court with a report under [s181\(1\)](#).

I agreed that the company should not have to plead to the statement of claim until Ms Paki's solicitor on the record confirms to the Registrar that he had instructions and that the challenge was to be prosecuted.

[6] The Authority's [s181](#) report was provided to the Court on 13 November 2007. On 3 December Ms Paki's solicitor sought leave to withdraw as counsel on the grounds that he had received instructions from his client that he was no longer to represent her and was to seek leave to withdraw.

[7] I deal with that question first. In the circumstances outlined, Ms Paki's solicitor is granted leave to withdraw as counsel. That leaves, however, the problematic question of Ms Paki's address for service which has, until now, been at the office of her solicitor. It is now doubtful whether Ms Paki will prosecute her challenge but that is still open to her, even if in modified form as a result of the [s181](#) report. In all the circumstances the best course is for me to make a direction that any further documents to be served on Ms Paki should be served at both the solicitor's office (the current address for service set out in the statement of claim) and also Ms Paki's post office box number and her email address that have been supplied to the Registrar and should now be supplied to the defendant's solicitors.

[8] I turn now to the consequence of the [s181](#) report provided to the Court. I note that both parties were given an opportunity by the Authority to comment on its draft report but that neither took that opportunity.

[9] The Authority's "good faith report" confirms and adds to the detailed account of Ms Paki's absence of participation in its investigative process. She did not file briefs of evidence either in support of her claim to a personal grievance or in opposition to the company's claims against her. She did not file an amended statement in reply as directed. There was inadequate substantiation of the ill-health that she said precluded her from attending the investigation. Indeed, Ms Paki also appeared not to have communicated with her own lawyer about these matters as would have been appropriate to the serious issues raised by and against her. The Authority noted that Ms Paki's personal grievance claim included allegations of sexual harassment that were serious but were not supported by evidence. Although Ms Paki did attempt to resolve these matters by mediation, that was unsuccessful and the Authority has concluded that there was, thereafter, a marked pattern of failure to co-operate with it and to facilitate the investigation. The Authority's report notes that Panel Holdings, by contrast, facilitated the Authority's investigation and acted in good faith towards Ms Paki.

[10] Pursuant to [s182\(2\)](#) I am satisfied, on the basis of the Authority's report, that Ms Paki did not participate in its investigation of the matters in a manner designed to resolve the issues involved. It follows that I must now direct, under subs (3), in relation to the issues involved in the matter, the nature and extent of the hearing.

[11] Ms Paki being the plaintiff, should have the first opportunity to make such submissions to the Court on this question. Both parties are from the Waikato region although the company's solicitors are in Auckland. In these circumstances submissions should be made in writing. Ms Paki may have the period of 14 days from receipt by her of this interlocutory judgment to make any written submissions she wishes to about the nature and extent of the hearing of her challenge. Panel Holdings may then have the period of 1 month (bearing in mind the Christmas/New Year break that will begin shortly after the expiry of Ms Paki's time) to respond by memorandum.

[12] Because Ms Paki is now not represented by counsel, she should be aware that a failure to respond to this direction to make submissions about the nature and extent of her challenge, may strengthen any claim that the defendant may bring to dismiss her challenge for want of prosecution and for costs. If Ms Paki is in any doubt about her rights and liabilities in the matter, I urge her to take professional advice about these immediately.

[13] A copy of this judgment is to be sent to Ms Paki's former solicitor and to her directly at the address for her held by the Registrar.

GL Colgan

Chief Judge

Judgment signed at 4.30 pm on Monday 3 December 2007