

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2011] NZERA Auckland 455  
5306232

BETWEEN                      WILLIAM QUIN  
   Applicant  
  
AND                                TRUCKING RELIEF  
   (WAIKATO) LIMITED  
   Respondent

Member of Authority:        Alastair Dumbleton  
  
Representatives:              Applicant in person  
   Rose Alchin, counsel for Respondent  
  
Consideration of papers:    19 October 2011  
  
Determination:                20 October 2011

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**DETERMINATION OF THE AUTHORITY**

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**Application to re-open investigation**

[1]     Mr William Quin has applied to the Authority under clause 4 of Schedule 2 of the Employment Relations Act 2000 for an order to have an investigation re-opened.

[2]     The particular investigation was closed in April 2011 when the Authority issued its costs determination following an earlier determination in which the Authority (member Ms Vicki Campbell) had determined that Mr Quin did not have a personal grievance and had not been dismissed, as he claimed, from his employment with the respondent Trucking Relief (Waikato) Ltd. The substantive decision was given on 7 January 2011 under [2011] NZERA Auckland 03 and the costs decision was under [2011] NZERA Auckland 175.

[3]     Mr Quin applied in September 2011 to have the investigation of his grievance claim re-opened. He gave in detail the grounds relied upon in support of his application.

[4] Trucking Relief (Waikato) Ltd opposed the application on the basis that it was merely a request to have the Authority “re-litigate” matters that it had already fully heard and determined, and also because there had been inordinate delay in making the application. The substantive determination had been issued on 7 January 2011 whereas the re-opening application was not made until nearly nine months later.

[5] Before considering the parties’ submissions on the papers, as they agreed the Authority could do, it disclosed to Ms Alchin that I had considered and responded to a complaint Mr Quin had earlier made against Ms Campbell under the Authority’s formal procedure. Complaints against members are considered by the Authority Chief who is also a member.

[6] I advised Ms Alchin the outcome was that Mr Quin had been notified that the matters raised by him were not within the scope of the complaints procedure, as the personal conduct or behaviour of an Authority member had not been complained of. Mr Quin was advised that challenge, or review, or re-opening (on grounds), were remedies available where the decision or decision making was contested, as appeared to be the case from the nature of the complaint.

[7] The parties advised they had no objection to me as an Authority member determining the re-opening application, Ms Campbell having resigned that office she had previously held.

[8] Mr Quin’s application begins with the following statements:

*That the Member of the Authority ..... in her Determination dated 7th January 2011 made a number of statements that can be proven to be incorrect & that she failed to address a number of important issues that would have proven that the applicant, Mr. W. Quin was unjustifiably dismissed.*

[9] Mr Quin said he was also dissatisfied with the determination because the Authority had not addressed in it “the non payment of holiday pay or wages” owed to him over the 2010 Christmas and New Year period.

[10] From my consideration of the application I must find that Mr Quin wishes to have the Authority re-open the investigation so that different findings from the same evidence Ms Campbell considered can be made in his favour. That is not the purpose of a re-opening, although it may be a result obtainable from a challenge to the Employment Court.

[11] Mr Quin does not rely on any new evidence only coming to light since the investigation was finished but simply disputes the findings made by Ms Campbell from the evidence given and obtained during the Authority's investigation. It is not a function of a re-opened investigation to have another member re-assess the same evidence and potentially come to different findings and a different determination.

[12] I agree with Ms Alchin that issues of *res judicata* and estoppel apply. In this regard the following observation of the Employment Court is apt:

*It is contrary to public policy to allow any person to be repeatedly pursued in Court on account of the same transaction, except so far as is allowed under express rules of Court providing for rights of appeal, review and re-hearing.*

*Reid v. New Zealand Fire Service Commission (No.2)* [1998] 3 ERNZ 1237.

[13] While there are rules providing for re-opening in the Authority they do not extend to having the Authority reconsider its findings from the evidence originally before it. The existence of new evidence that previously was unavailable has not been claimed by Mr Quin.

[14] An omission to address and determine a claim or part of a claim made might provide grounds for re-opening, but in this case I accept the submission of Ms Alchin that Mr Quin had made no claim for non payment of holiday pay or wages over the 2010/2011 holiday period. The Authority could not be expected to raise that claim of its own motion.

[15] I also agree that an unexplained delay of nearly nine months before re-opening was applied for is unreasonable and that long before that time the successful respondent could reasonably have expected that this claim was finally disposed of.

## **Determination**

[16] For the above reasons the application for re-opening is declined.

**Costs**

[17] Any application for costs is to be made within 14 days of the date of this determination.

A Dumbleton

**Member of the Employment Relations Authority**

(pursuant to clause 16 of Schedule 2 of the Employment Relations Act 2000)