



Employment Court of New Zealand

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Rachelle v Air New Zealand Limited [2018] NZEmpC 102 (6 September 2018)

Last Updated: 15 September 2018

IN THE EMPLOYMENT COURT
CHRISTCHURCH

[\[2018\] NZEmpC 102](#)
EMPC 250/2017

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER	of an application for further and better particulars
BETWEEN	GEORGINA RACHELLE Plaintiff
AND	AIR NEW ZEALAND LIMITED Defendant

Hearing: On the papers
Appearances: G Rachelle, plaintiff in person
A Caisley, counsel for the
defendant
Judgment: 6 September 2018

INTERLOCUTORY JUDGMENT (NO 3) OF JUDGE K G SMITH APPLICATION FOR FURTHER AND BETTER PARTICULARS

[1] On 19 June 2018, Ms Rachelle filed her fifth amended statement of claim in this proceeding. In the same document she incorporated a notice of opposition to an application for further and better particulars of her previous statement of claim made by Air New Zealand Ltd. Ms Rachelle stated her opposition to providing any further information to explain, or better explain, her claim to Air NZ.

[2] The combined way in which Ms Rachelle pleaded her claim and provided further particulars means the pleading is not easy to follow and requires detailed cross-referencing to understand the claims made. The pleading starts with an introduction about the grounds on which she opposed the making of orders for further and better

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particulars followed by a statement of her claim against Air NZ beginning at paragraph [1](a). That paragraph reads:

Particulars of Claim: Case no: EMPC 250/2017

1 (a)

1. Workplace Discrimination
2. Harassment and bullying within the workplace
3. [Breaches] of 12 workplace codes and conducts
4. Breaches of Privacy Law Act within the workplace
5. Unlawful dismissal
6. Several breaches of policies and procedures carried out within the workforce

7. Defamation of Character
8. Sexual Harassment (emphasis original)

[3] Under the heading “further and better particulars of claim” Ms Rachele set out the information said to support the claims made in paragraph [1](a).

[4] These claims were affected by the Court’s interlocutory judgment striking out three of them.¹

[5] On 22 June 2018, Air NZ filed an amended application for orders seeking further and better particulars. An amendment was necessary because of the Court’s interlocutory judgment. Allegations of workplace discrimination, defamation and sexual harassment were struck out leaving for consideration claims of:

- (a) harassment and bullying within the workplace;
- (b) breaches of 12 workplace codes and conducts;
- (c) breaches of privacy law within the workplace

¹ *Rachele v Air New Zealand (No 2) Ltd* [2018] NZEmpC 75.

(d) unlawful (i.e. unjustified) dismissal; and

(e) several breaches of policies and procedures carried out within the workplace.

[6] Air NZ’s amended application addressed each of those remaining pleadings. As part of her notice of opposition to the amended application Ms Rachele stated her refusal to “hand over” any more details of her claim because Air NZ had “ample details” provided previously. She erroneously attributed to the Court an instruction to the effect that she cannot and should not give “all her evidence away”. This statement was a reference to minutes from the Court drawing to her attention the need to comply with reg 11 of the [Employment Court Regulations 2000](#).

[7] The balance of Ms Rachele’s notice of opposition commented that all further and better particulars will be revealed “...in full detail throughout the hearing” when she cross-examines certain witnesses.

[8] This amended application was discussed at a telephone directions conference on 8 August 2018. During the conference Ms Rachele repeated the statement in her notice of opposition; she was not prepared to provide any of the further and better particulars requested by Air NZ. Despite that emphatic statement a subsequently issued minute provided her with an opportunity to make submissions, in response to Air NZ’s application and submissions, if she wished to do so. The time allowed for her submissions has elapsed and she has not taken up that opportunity or sought further time to do so.

[9] The starting point is the adequacy of a pleading. Regulation 11 provides:

11 Statement of claim

(1) Every statement of claim filed under [regulation 7](#) or [regulation 8](#) must specify, in consecutively numbered paragraphs,—

- (a) the general nature of the claim;
- (b) the facts (but not the evidence of the facts) upon which the claim is based;
- (c) any relevant employment agreement or employment contract or legislation and any provisions of the agreement or the contract or the legislation that are relied upon;

(d) the relief sought, including, in the case of money, the method by which the claim is calculated;

(e) the grounds of the claim:

...

(2) The matters listed in subclause (1) must be specified with such reasonable particularity as to fully, fairly, and clearly inform the court and the defendant of—

- (a) the nature and details of the claim; and
- (b) the relief sought; and
- (c) the grounds upon which it is sought.

[10] Regulation 11 (especially reg 11(2)) emphasises the responsibility of a party bringing a claim to fully, fairly and clearly inform the Court and the defendant of the nature and details of the claim, the relief sought, and the grounds on which it is sought.

[11] In *Lorigan v Infinity Automotive Ltd*, Judge Corkill referred to the absence of a specific regulation under which the Court may order more explicit pleadings to be filed.² Instead, the High Court Rules provide assistance.³ *Lorigan* assessed the adequacy of a pleading by asking the following questions:⁴

- (a) Has sufficient information been provided to inform the other party of the case to enable them to take steps to respond?
- (b) Is there a real risk that the other party may face a trial by ambush if further particulars are not provided?
- (c) Is the request oppressive or an unreasonable burden upon the party concerned?

[12] Finally, *Lorigan* emphasised that the point of reg 11 is to require specified facts upon which a claim is based to be pleaded not the evidence of those facts.⁵

[13] Previously the Court has drawn to Ms Rachelle's attention the need for her pleadings to comply with reg 11. While the fifth amended statement of claim

2 *Lorigan v Infinity Automotive Ltd* [2017] NZEmpC 153 at [20].

3. [High Court Rules 2016](#), r 5.21 as applied through reg 6 of the [Employment Court Regulations 2000](#).

4 *Lorigan*, above n 2, at [23].

5 At [24] and see [Employment Court Regulations 2000](#), reg 11(1)(b).

described some of the circumstances she said led to her claims, many of the pleaded causes of action lacked information to comply with reg 11. Air NZ's application sought further and better particulars about each cause of action described in paragraph

[5] above. Each pleading is discussed below.

[14] In paragraph [1](a)(2) Ms Rachelle pleaded harassment and bullying within the workplace, amplified at paragraph [1](b) as:

Please refer to **dated** appendix 3c. Roster [alterations] as well as threats of being unable to enter the ZQN grounds of operation. (***Mr Jeremy Holman and Mr Naoto Unno 2015 – 2016***)

(emphasis original)

[15] Paragraph [1](c) provided further information in a narrative format. Despite the information contained in that narrative there is no description of the circumstances, or events, giving rise to these claims. The general nature of the claim is not stated, and the facts are not stated beyond the sparse comment about "ZQN grounds of operation". Roster alterations are touched on in paragraph [1](b) and again, obliquely, at paragraph [28] with a pleading about a telephone call in February 2016 alleging she was told she would be removed from the roster over time. The pleading attributes this comment to a named person.

[16] Contrary to the pleading in paragraph [1](a)(2), "appendix 3c" was not attached. Air NZ seeks confirmation that what is pleaded is a reference to the same appendix that was attached to the earlier statement of claim of 6 February 2018. It also seeks particulars stating how the appendix relates to the claim of harassment and bullying.

[17] Air NZ is entitled to have clearer pleadings about what event, or events, are relied on for the claim that it is responsible for harassment and bullying in the workplace. The extremely brief way in which this pleading sets out the claim Air NZ is to answer does not satisfy the first two questions posed by *Lorigan*; sufficient information has not been provided to inform it of the case it is to answer. It follows there is a real risk that without further particulars being provided it may face trial by ambush. The third question posed in *Lorigan*; to ask if the request is oppressive or unreasonably burdensome, does not arise.

[18] Paragraph 1(a)(3) refers to breaches of 12 workplace codes and conducts. Paragraph 1(b) provides the following further information:

Please find attached **dated** Appendix 2 (***Mr Naoto Unno, Ms Christina Guthrie, Joanne Kirker, Mr Jeremy Holman, Christopher Luxon, Chantelle Air New Zealand HR, (2015 – 2016)***)

(emphasis original)

[19] The pleading does not identify the workplace "codes or conducts" referred to and Appendix 2 was not attached.

[20] Air NZ's amended application seeks confirmation that what is pleaded was intended to be a personal grievance. It also seeks particulars of the "codes and conducts" it is alleged to have breached and what action constituted the breach in each case, and when that happened.

[21] Paragraph 1(a)(3) is deficient in the way discussed in the first two questions in

Lorigan. The requests made by Air NZ are neither oppressive nor unreasonable.

[22] Paragraph 1(a)(4) refers to breaches of the “Privacy Law Act” within the workplace. Paragraph 1(b) specifies that what happened was:

Facebook invasion and removal of personal items without permission consent.

(Mr Unno, Ms Joanne Kirker (2015))

(emphasis original)

[23] Air NZ is seeking confirmation that Ms Rachelle intends this information to be a personal grievance. It seeks particulars of the actions pleaded as “Facebook invasion”, including what that expression means, and when this event is alleged to have occurred. As to the removal of property, the company seeks confirmation a personal grievance is intended, and that the removal of the property is claimed to have been undertaken by Ms Joanne Kirker in 2015. Particulars of the items said to have been removed without permission or consent, where they went to, where they were removed from, and when they are alleged to have been removed are also sought.

[24] The pleading referring to Mr Unno is supplemented at paragraph [37] by a claim that he was said to have befriended Ms Rachelle’s estranged husband on Facebook. The pleading was:

There is plenty of evidence of the plaintiff’s hours been “**unilaterally varied or withdrawn**” via Naoto Unno, who friended the plaintiff’s estranged husband on Facebook, which is once again against company policy for both Mount Cook Airlines and Air New Zealand and breaches the [P]rivacy Act in entering Ms Rachelle’s personal life, as well as...

(emphasis original)

[25] That information is sufficient to inform Air NZ of the allegations it is required to answer as required by reg 11.

[26] Ms Rachelle pleaded, at paragraph [18], that on 26 September 2014 she was hand-picked from a group of 20 seasonal workers after having received the Winter Award of Excellence for her work ethic, customer service, attitude and team work. At paragraphs [19] and [20] she pleaded requesting three weeks leave to assist her husband with a new business venture and, when she returned to attend to her locker and speak to her manager, discovered it had been cleaned out without permission by Ms Kirker. There is sufficient information in these pleadings to adequately identify the timeframe relevant to this claim, and the person to whom the alleged behaviour is attributed for Air NZ to be properly informed and respond as contemplated by reg 11.

[27] Paragraph 1(a)(5) referred to unlawful dismissal, which must be intended to be a pleading of unjustified dismissal. Paragraph 1(b) explains this pleading as follows:

Wrongfully accused of swearing at a pilot as a result, the plaintiff Ms Rachelle’s financial income has been lost as well as her career and future employment prospects. Please refer to **dated** Appendix 4. **(Mr Naoto Unno, Ms Christina Guthrie, Mr Jeremy Holman (22nd Dec 2015-2016))**

(emphasis original)

[28] Air NZ’s amended application seeks confirmation that a personal grievance is being claimed and that Ms Rachelle alleged she was dismissed by letter written by Jeremy Holman sent by email to her on 14 June 2016. It sought confirmation she alleged the letter was sent to her because she may have sworn at a pilot in December 2015.

[29] At paragraph [11] of the pleading Ms Rachelle claimed she was summarily dismissed by Mr Holman on 14 June 2016. The same allegation is repeated at paragraph [27] where she pleaded she was denied a permanent position, with Mount Cook Airlines, based on allegedly swearing at a pilot. This event is said to have occurred at a meeting on 22 December 2015 and the persons who participated in that meeting were named. That is sufficient information, as described in *Lorigan*, to inform Air NZ of the issue it needs to address in response to this pleading and it complies with reg 11.

[30] Finally, paragraph 1(a)(6) of the pleading alleges breaches of policies and procedures within the workplace. That pleading is amplified in paragraph 1(b) as follows:

Please find **dated** attached Appendix 2 **(Mr Naoto Unno, Ms Christina Guthrie, Mr Jeremy Holman, Ms Joanne Kirker, Mr [Christopher] Luxon and HR Department Air New Zealand (2015- 2016))**

(emphasis original)

[31] Air NZ's amended application asked how this claim differed from the one made in paragraph 1(a)(3), which alleged breaches of 12 workplace "codes and conducts". Air NZ wants Ms Rachelle to identify the policies and procedures in question, the circumstances in which a breach, or breaches of them, is said to have occurred, when they occurred, and by whom.

[32] Appendix 2 was not attached to the claim. Nothing in the balance of the pleading describes the policies said to have been breached or how that happened. This claim does not satisfy the first two questions from *Lorigan*. Air NZ is entitled to have that information.

Conclusion

[33] Air NZ's amended application is partly successful, relating to paragraphs 1(a)(2), 1(a)(3), and 1(a)(6) of the fifth amended statement of claim. The following orders are taken from Air NZ's application with minor modifications. Ms Rachelle is to provide further and better particulars of her claim against Air NZ as follows:

1. **Regarding paragraph 1(a)(2) of the Amended Statement of Claim "Harassment and bullying within the workplace":**
 - 1.1. Provide particulars of the content of Appendix "3c", or provide confirmation that the document is the same as the Appendix 3c that was attached to the Amended Statement of Claim dated 6 February 2018;
 - 1.2. Provide particulars of how Appendix "3c" relates to the claim(s) of harassment and bullying.

Roster Changes

1.3. Confirm that the plaintiff is raising a personal grievance claim for bullying and harassment due to roster changes under [s 103\(1\)\(b\)](#) of the [Employment Relations Act 2000](#) (the Act).

1.4. Provide particulars of:

- a. the dates the plaintiff alleges the roster changes were made;
- b. what the rosters were changed from, and to;
- c. who is alleged to have made the changes;
- d. what, if anything, was communicated to the plaintiff regarding the reason why the roster change was occurring and the dates of which she was notified of the changes;
- e. how the alleged roster changes amount to harassment and/or bullying within the workplace.

1.5. If the plaintiff alleges that she raised her concerns within the workplace, particulars of:

- a. the date or dates on which the plaintiff raised her concern or concerns;
- b. what the plaintiff raised; and
- c. with whom the plaintiff raised her concern or concerns.

Threats of being unable to enter Workplace

1.6. Confirmation that the plaintiff is raising a personal grievance claim for bullying and harassment due to threats of being unable to enter the workplace under [s 103\(1\)\(b\)](#) of the Act.

1.7. Particulars of:

- a. the dates the plaintiff alleges the threats were made;
 - b. the form in which the threat was made (ie was it in writing, or verbally);
- c. what the "ZQN grounds of operation" means and in the event a specific part of the "operation" is referred to, particulars of that specific place;
- d. who is alleged to have made the threat;
 - e. why the plaintiff needed to enter the "ZQN grounds of operation", connected with the business operation of the defendant;
 - f. how the alleged threats support her claim for harassment and/or bullying.

1.8. If the plaintiff alleges that she raised her concerns within the workplace, particulars of:

- a. the date or dates on which the plaintiff raised her concern or concerns;

- b. what the plaintiff specifically raised; and
- c. with whom the plaintiff raised her concern or concerns.

2. Regarding paragraph 1(a)(3) of the Amended Statement of Claim “[Breaches] of 12 workplace codes and conducts”:

2.1. Confirmation that the plaintiff is raising a personal grievance claim under [s 103\(1\)\(b\)](#) of the Act.

2.2. Particulars of each of the 12 breaches the plaintiff says has occurred, including:

- a. in each of the 12 cases, what rule, policy, term of her employment, or other obligation is alleged to have been breached;
- b. what action is alleged to constitute the breach, in each case;
- c. who took the action in each case;
- d. when the action was taken, in each case.

2.3. Provide particulars of the content of Appendix "2", or provide confirmation that the document is the same as the appendix 2 that was attached to the Amended Statement of Claim dated 6 February 2016;

2.4 Particulars of how those 12 breaches relate to Appendix "2".

...

5. Regarding paragraph 1(a)(6) of the Amended Statement of Claim “Several breaches of policies and procedures carried out within the workforce”:

5.1. Particulars of how this claim differs from the claim described in paragraph 1(a)(3) of the Amended Statement of Claim, described as "*[Breaches] of 12 Workplace Codes and Conducts*".

5.2. If paragraph 1(a)(6) does raise new and different claims, further and better particulars in respect of paragraph 1(a)(6) as it seeks in respect of paragraph 1(a)(3); namely:

- a. confirmation the plaintiff is raising a personal grievance claim under [s 103\(1\)\(b\)](#) of the Act;
- b. particulars of each workplace policy and procedure alleged to have been breached;
- c. what action is alleged to constitute the breach in each case;
- d. who took the action in each case;
- e. when the action was taken in each case.

[34] The further and better particulars are to be provided within 15 working days of the date of this judgment. Leave is reserved to apply for further or other orders relating to Air NZ's application.

[35] Costs are reserved.

K G Smith Judge

Judgment signed at 2.30 pm on Thursday 6 September 2018