

The Authority's investigation

[3] Ms Ropiha lodged this application in the Authority on 5 July 2022. On 12 August TWoA lodged a dismissal application accompanied by a memorandum of counsel and supporting affidavit. A case management conference was held with the parties on 15 September and a timetable set for the filing of submissions and supporting information with which the parties complied. Ms Ropiha's request for the case management conference to be recorded and a copy of any such a recording was not granted.³ At the investigation meeting Ms Ropiha and TWoA's representative spoke to their submissions. The investigation meeting was held by agreement by audio visual link.

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Background

[5] By email dated 1 July 2021 Ms Ropiha wrote to TWoA instructing it to stop deducting PAYE, ACC earner levies and union fees from her wages immediately. She advised she was exercising her rights under s 5(1) and 6(2) of the Wages Protection Act 1983 (WPA). Section 5 deals with employer deductions from a worker's wages or salary and how consent for deductions is made or withdrawn. Section 6 deals with overpayments and recovery of such. Ms Ropiha does not suggest the PAYE and ACC earner levy deductions are incorrectly calculated and seeks to recover the delta.

[6] On 8 July TWoA wrote to Ms Ropiha confirming the union fee deduction would stop but the PAYE and ACC earner levy deductions would continue.

[7] The parties communicated further on this issue without resolution.

[8] On 2 March 2022 Ms Ropiha emailed the Inland Review that she had exercised her right under the WPA to receive her wages without deduction, this would occur from

³ Direction of the Authority *Katrina Raukura Ropiha – Te Wānanga O Aotearoa* 22 September 2022.

16 March and she had assured TWoA there would be no consequences to it from the Inland Revenue. There is no information before the Authority to indicate the Inland Revenue replied to Ms Ropiha's email.

[9] On 29 April and 2 May Ms Ropiha issued notices (the notices) in her name as a "native sovereign living woman, practitioner of Customary Law" to 13 members of TWoA's executive and governance team. The notices refer to correspondence between the Ms Ropiha and TWoA from 4 July 2021 to 19 March 2022 and continue:

Notice of Claim

I Raukua Ropiha-Waikerepuru hereby make claim that you [name of executive team or Board member] by association and by obfuscation violating my substantive rights contained in the statutes of the realm Schedule 1 Imperial Laws Application Act 1988 of free will and in violation of S.92Y Health Act 1956 and in violation of s 240 and s. 98 Crimes Act 1961 and in violation of s.4 and s.5 and s.6 and s.9 Wages Protection Act 1983.

Cease-and-desist

As agents of the Crown are sworn to uphold statute any perceived contract under subordinate legislation, mandates and orders being inferior laws must be rescinded under s.40 Contract and Commercial law Act 2017.

Fee Schedule and Invoice

For your reference I have attached a fee schedule and invoice for the purposes of breaches that have occurred which have resulted in her activation of the fee schedule and invoice for paragraphs 1 and 2.

[10] On 2 May Ms Ropiha issued invoices to people to whom the notices had been issued for sums calculated using the fee schedule. The Authority understands the amounts are calculated according to the fee schedule referred to in the notices. The final sentence of the invoices provide:

Failure to respond/rebut the above claims within 7 days will confirm tacit agreement and come into effect on that date.

[11] It is these invoiced sums for which Ms Ropiha seeks orders in her favour.

Issues

[12] Following are the issues for consideration:

- should Ms Ropiha's application be dismissed?; and
- should either contribute to the cost of representation of the other?

Should Ms Ropiha's claim be dismissed?

[13] Clause 12A of Schedule 2 of the Act gives the Authority power to dismiss frivolous or vexatious proceedings. The Authority's power to dismiss proceedings on the grounds that they are frivolous or vexatious is limited and the threshold for establishing that is high.⁴ Dismissing a claim is a serious step, not one to be taken lightly.

[14] The Authority's jurisdiction comes from s 161 of the Act. This provides that the Authority has "exclusive jurisdiction to make determinations about employment relationship problems generally" and extends to the minimum code legislation which includes the WPA. The Authority does not have jurisdiction under the Health Act 1956, the Imperial Laws Application Act 1988 or the Crimes Act 1961.

[15] It is understood Ms Ropiha issued the notices and invoices because TWoA did not follow her instruction to stop deducting PAYE and ACC earner levies from her wages. The claim Ms Ropiha brings therefore has two limbs. The first limb is whether she can withdraw consent to deduction of PAYE and ACC earner levies. The second, following TWoA's failure to recognise her withdrawal of consent, is whether the Authority can enforce invoices Ms Ropiha has issued of her own motion to individuals associated with TWoA for fees calculated under a fee schedule generated of her own motion. The notices and invoices Ms Ropiha issued set out the basis on which she brings her claim before the Authority. She spoke to and expanded on these issues in her submissions to the Authority. In reaching this determination the parties' submissions and the supporting information provided has been considered.

[16] Section 15 of the Wages Protection Act 1983 expressly makes that Act subject to the provisions of any other statute for example the Income Tax Act 1976, which governs PAYE. ACC earner levies are similarly governed by statute. The claim that a self-declared withdrawal of consent to deductions for PAYE and ACC earner levies has no prospect of success. The high threshold that it is a frivolous claim is met.

[17] The Authority does not have jurisdiction to enforce the invoices in Ms Ropiha's favour. As set out above there is no legal basis for the withdrawal of consent to these deductions. The notice and fee schedule which form the basis for the invoices are not

⁴ *Lumsden v Sky City Management Limited* [2015] NZEmpC 225.

within or enforceable through the Authority's jurisdiction. No such notice or fee schedule exists under the Act or the employment minimum code legislation including the Wages Protection Act 1983. The parties' written employment agreement does not anticipate or provide a mechanism for the issuing of such notices or invoices. The jurisdiction Ms Ropiha relies on to issue the notices arises from her personal capacity as a "native sovereign living woman, practitioner of Customary Law". This capacity does not fall within the jurisdiction the Authority is authorised to exercise. Accordingly, the application to order TWoA to pay the invoices has no prospect of success because the Authority does not have the jurisdiction to make the orders Ms Ropiha seeks. The high threshold that it is a frivolous claim is met.

[18] Additional matters concerning alleged acquiescence to unilaterally asserted contractual terms and contract privity are additional issues which present overwhelming barriers to the success of Ms Ropiha's claim.

[19] Having considered the issues raised by the parties it is appropriate to exercise the Authority's discretion as set out in schedule 2, clause 12A of the Employment Relations Act 2000 to dismiss Ms Ropiha's matter lodged in the Authority on 5 July 2022.

Costs

[20] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[21] If they are not able to do so and an Authority determination on costs is needed TWoA may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Ms Ropiha would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[22] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.⁵

Marija Urlich
Member of the Employment Relations Authority

⁵ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.