



Employment Court of New Zealand

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Samuels v Employment Relations Authority [2019] NZEmpC 92 (5 February 2019)

Last Updated: 10 August 2019

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2019\] NZEmpC 92](#)

EMPC 68/2018

IN THE MATTER OF	an application for judicial review
AND IN THE MATTER OF	an application for an unless order
BETWEEN	ROLAND SAMUELS Applicant
AND	EMPLOYMENT RELATIONS AUTHORITY First Respondent
AND	CAROLYN LANG Second Respondent
AND	GOURMET FOODS LIMITED Third Respondent

Hearing: On the papers

Appearances: G Bennett, advocate for applicant
Appearance for respondents
excused J Catran, counsel assisting
the Court

Judgment: 5 February 2019

INTERLOCUTORY JUDGMENT (NO 2) OF CHIEF JUDGE CHRISTINA INGLIS

(Application for unless order)

[1] These proceedings have not been progressed on behalf of the plaintiff in a streamlined way. Rather, they have been plagued by a series of unfortunate procedural failings and delays.

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[2] Counsel assisting the Court has sought an unless order. The application proceeds against the following backdrop:

- A failure to file and serve a court-directed second amended statement of claim on time, which resulted in a hearing date being lost;
- a failure to file and serve an affidavit confirming service on time;
- a failure to file a record of proceedings on time;
- a failure to file a marked-up copy of the statement of claim as required by the [Employment Court Regulations 2000](#);
- a failure to file a court-directed sixth amended statement of claim;
- a failure to respond to Registry requests in relation to outstanding matters in a timely manner; and
- a failure to file and serve affidavits for hearing.

[3] The Employment Court may make an unless order in appropriate circumstances. The purpose of an unless order is to enforce interlocutory orders or requirements imposed at case management. Unless a specified action is taken by a specified time, a specified action automatically results.

[4] While unless orders are to be sparingly made, I have no difficulty concluding that one is appropriate in the circumstances of this case. Indeed, I understand Mr Bennett, advocate for Mr Samuels, to agree with that conclusion. That is reflected in a memorandum he has filed, consenting to an order on the terms sought.

[5] The following order is accordingly made:

Unless Mr Samuels files and serves an affidavit setting out the matters referred to at paragraphs 15.1 and 15.2 of Ms Catran's memorandum of 1 August 2019

by 4 pm on Monday 12 August 2019, the remaining two causes of action will be struck out and Mr Samuels's judicial review proceeding will be dismissed.

[6] For the avoidance of doubt, the timetabling orders previously made in relation to the filing and service of submissions remain in place and are to be strictly complied with.

[7] Costs are reserved.

Christina Inglis Chief Judge

Judgment signed at 3.45 pm on 5 August 2019

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