

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 89
5549005

BETWEEN YEDAN TAO
Applicant

AND YUE CHEN
Respondent

Member of Authority: TG Tetitaha

Representatives: J Won, counsel for Applicant
No appearance for Respondent

Date of Minute: 25 March 2015

DETERMINATION OF THE AUTHORITY

[1] This matter has been referred to me for the purposes of determining an application for urgency without notice to the respondent. The grounds for urgency are the sale of the respondents business and personal property. There is no stated basis for urgency being determined without notice.

[2] The personal grievance was raised on 9 December 2014 and the café assets sold on 11 December 2014. No date for the sale of the personal assets has been given. The statement of problem was filed on 20 March 2013.

[3] The applicant has other remedies to freeze assets including mareva injunctions. This can be obtained from the Employment Court not the Authority. There is no evidence these have been considered.

[4] There is no express power for the Authority to grant urgency without notice to the respondent. The exercise of the Authority's discretion must take into account the mandatory considerations under s157 of the Employment Relations Act 2000. Those considerations include compliance with the principles of natural justice (s157(2)(a).

A without notice application is the anti-thesis of natural justice unless the Authority is required to act promptly to preserve a party's position.¹

[5] There has been an inexplicable three month delay in filing the application for urgency. There is no sworn evidence supporting the application. The applicant still has recourse to marevea injunction proceedings to preserve her interests. The respondent's right to natural justice override the necessity to preserve the applicant's position at this late stage.

[6] In the circumstances urgency is declined. The statement of problem is to be served in the usual way. The parties are directed to attend mediation.

TG Tetitaha
Member of the Employment Relations Authority

¹ *Metargem v Employment Relations Authority* [2003] 2 ERNZ 186

