



# Employment Court of New Zealand

You are here: [NZLII](#) >> [Databases](#) >> [Employment Court of New Zealand](#) >> [2013](#) >> [2013] NZEmpC 121

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

---

## Thunderbird One Limited v Harrington [2013] NZEmpC 121 (5 July 2013)

Last Updated: 26 July 2013

### IN THE EMPLOYMENT COURT CHRISTCHURCH REGISTRY

#### [\[2013\] NZEmpC 121](#)

CRC 25/13

IN THE MATTER OF An application for an extension of time within which to commence proceedings

BETWEEN Thunderbird One Limited

Applicant

AND Rachel Lee Harrington

Respondent

Hearing: on the papers

Appearances: Adam Gallagher, counsel for the applicant

Angeline Boniface, counsel for the respondent

Judgment: 5 July 2013

### JUDGMENT OF JUDGE A A COUCH

[1] This decision deals with an unopposed application to extend time for filing a challenge to a determination of the Employment Relations Authority (the Authority).

[2] The Authority has given two determinations involving the parties. In the first<sup>1</sup>, the Authority concluded that the applicant was the respondent's employer, rather than another company against which she had originally made her claim, Picture Vehicles Limited. In its second determination<sup>2</sup>, the Authority sustained the respondent's several personal grievances and awarded her remedies as a result but declined to impose a penalty she sought.

[3] The applicant was dissatisfied with the Authority's second determination and resolved to challenge it pursuant to [s 179](#) of the [Employment Relations Act 2000](#). To

<sup>1</sup> [2012] NZERA Christchurch 227.

<sup>2</sup> [2013] NZERA Christchurch 68.

Thunderbird One Limited v Harrington CHRISTCHURCH REGISTRY [\[2013\] NZEmpC 121](#) [5 July 2013]

pursue such a challenge as of right, a statement of claim had to be filed within 28 days after the date of the determination. As the second determination was dated 24

April 2013, that meant the final day for filing was 22 May 2013.

[4] Instructions to prepare a statement of claim and file it were given to the applicant's solicitors in good time. They prepared the necessary documents and sent them by email to the Registrar of the Court on 21 May 2013 but did not tender the filing fee until the cheque enclosed with the original documents was received by the Registrar through DX mail on 23 May 2013.

[5] Regulation 7(3) of the [Employment Court Regulations 2000](#) provides that "The prescribed fee must be paid at or before the

time at which the statement of claim is filed.” The failure to pay the filing fee therefore precluded the Registrar from accepting the statement of claim received by email for filing and necessitated the current application for an extension of time.

[6] The application is not opposed by the respondent but that, of itself, does not mean that the application should be granted. I must be satisfied on the evidence before me that it is in the interests of justice to do so.

[7] The delay in this case was minimal and was the result of an error by counsel rather than tardiness on the part of the applicant. The respondent’s solicitors were sent a copy of the statement of claim by email on 21 May 2013, within time, and there is no suggestion of prejudice to the respondent as a result of the delay.

[8] As to the likely merits of a challenge, a director of the applicant, Mr Marshall, deposes that he confirmed the contents of the statement of claim which is now before the Court as a draft. That statement of claim is detailed and, if the allegations in it can be established by evidence, would constitute a sound basis for a challenge.

[9] The factor which militates against granting the application is that the applicant failed to attend the Authority’s investigation meeting or to provide evidence to the Authority. Indeed, the Authority, records in its second determination that it granted leave to the applicant’s then counsel to withdraw because he was unable to obtain instructions. This raises the question whether it is just to permit the applicant to pursue a challenge when it has not made any attempt to resolve the case on its merits before the Authority. I regard this failure by the applicant as serious and significant.

[10] On balance, I conclude that it is appropriate to grant the application but I do so by a small margin.

[11] The filing fee tendered by the applicant on 23 May should now be accepted by the Registrar.

[12] The draft statement of claim provided by the applicant cites Picture Vehicles Limited as the “first plaintiff” and the applicant as “second plaintiff”. However, other than in the intituling, the statement makes no reference to the “first plaintiff” and seeks no relief on behalf of that company. The application for extension of time was made solely by Thunderbird One Limited. The form of these documents reflects the Authority’s conclusion in its first determination that the applicant was the respondent’s employer. That determination was not challenged. On the material currently before the Court, there is no place in this proceeding for Picture Vehicles Limited and it ought not to be a party. The matter will therefore proceed on the basis that the applicant is the sole plaintiff.

[13] As I have already noted, the second determination records the applicant’s failure to participate in the Authority’s investigation meeting or to provide any evidence to the Authority. Pursuant to [s 181\(1\)](#) of the [Employment Relations Act](#)

2000, the Authority is asked to submit to the Court a written report giving the Authority’s assessment of the extent to which the parties involved in the investigation have:

(a) facilitated rather than obstructed the Authority’s investigation; and

(b) acted in good faith towards each other during the investigation.

[14] Until that report is received and the Court has given directions under [s 182\(3\)](#), the respondent need not file a statement of defence.

[15] Costs are reserved.

A A Couch  
Judge

Signed at 3.00 pm on 5 July 2013.