



this and defend herself as she was never made aware of the original application and investigation.

[4] By way of response Mr Pietras advised he had a neutral position and would leave it to the Authority. He also advised that he accepted that if the Applicant was not, in fact, the person who employed him, then the investigation should be re-opened.

[5] That the Authority may reopen a matter in appropriate circumstance is expressly provided for in the Regulations.<sup>3</sup>

[6] Before proceeding, two points should be noted. The first is that some issues may arise in the fact Mr Pietras alleged Ms Vegar had used the alias Tanya Struck. The second is that there were always issues with service and ultimately the Authority approved alternate forms - namely service on a residential address which it was understood Ms Vegar owned in Auckland and which was her last known address<sup>4</sup> along with an email address through which the tenant communicated with Ms Vegar's father who, it was understood, acted as her agent.<sup>5</sup>

[7] As events now transpire there was no chance the physical documents were going to find their way to Ms Vegar. As originally understood, she lives in Spain and there was no known address to forward information to there. Furthermore, any chance they might be delivered via her father was also void given the documents were served on 10 November and there is ample evidence he was, by then, also in Europe. He did not return until late March 2022 and it would appear it was only on his return that he received copies of various documents which he passed to his daughter advising her of the Authority's proceedings.

[8] That however left the possibility of service via Mr Vegar's email address. Mr Vagar asserts he never received the documents by email having been locked out of his email service and incapable of getting the problem addressed from Spain. The issue was only addressed once he returned to New Zealand and while the evidence is weak, I have no reason to reject his statements.

[9] In other words I must now conclude there is a very high probability Ms Vegar was never advised of the proceedings and was therefore deprived of a chance to defend herself. To that I

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<sup>3</sup> Regulation 4 of the Employment Relations Authority regulations

<sup>4</sup> Regulation 16(3)(a)(ii) of the Employment Relations Authority regulations

<sup>5</sup> Regulation 16(3)(a)(iv) of the Employment Relations Authority regulations

add Joshua Pietras' frank admission they may well have got the wrong respondent and evidence there was always some questions about the veracity of the original extrapolation of Ms Struck to Ms Vegar.

[10] In the circumstances and given a penalty was also imposed which might potentially have serious long term consequences for Ms Vegar, I conclude there is a distinct possibility there has been a miscarriage of justice that should re-examined. This is a matter which should be reopened.

[11] Having said that I have to comment that communicating with Ms Vegar has not been easy, though largely as result of time differences and personal demands on her time and, that said, she is put on notice she must participate fully in the next process.

### **Conclusion and Orders**

[12] For the reasons above I conclude file number 3131037 should be re-opened and the two resulting determinations set aside.

[13] The Authority will soon contact the parties in order to arrange proceedings from here.

[14] Costs are reserved though in the circumstances I consider that should there be an issue it await the outcome of the reopening.

**Michael Loftus**  
**Member of the Employment Relations Authority**