

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2017] NZERA Christchurch 196
3013971

BETWEEN YAMILESI VILLAVICENCIO
Applicant

A N D GRANT JAMES LIMITED
Respondent

Member of Authority: Peter van Keulen

Representatives: Phillip de Wattignar, Advocate for Applicant
Janet Copeland, Counsel for Respondent

Investigation Meeting: On the papers

Submissions Received: 1 November 2017 for Applicant
19 October 2017 for Respondent

Date of Determination: 13 November 2017

DETERMINATION OF THE AUTHORITY

- A. I decline Grant James Limited's application for an order for security for costs.**
- B. I reserve costs.**

[1] Grant James Limited has applied for an order for security for costs against Yamilesi Villavicencio. It seeks an order requiring Ms Villavicencio to pay \$8,000.00 into an independent non-interest bearing trust account where it can be held until the costs in this matter have been determined.

[2] The circumstances that give rise to application include:

- (a) Ms Villavicencio has raised a personal grievance against Grant James for unjustified dismissal;
- (b) That grievance has progressed as an employment relationship problem through the Authority and was part heard on 12 October 2017;
- (c) The investigation of the employment relationship problem was not concluded on 12 October as Ms Villavicencio requested that I consider, as part of my investigation, a number of documents that had not been disclosed to Grant James or lodged with the Authority. I reviewed those documents on 12 October and decided that there may be potentially relevant documents to be considered by me but I should not proceed to consider them and question any witnesses for Grant James until they had an opportunity to consider the documents and respond to them;
- (d) This meant my investigation had to be adjourned so the documents could be disclosed and Grant James could consider them;
- (e) The investigation meeting is to reconvene on 22 November 2017.

[3] Counsel for Grant James raises a number of concerns about this adjournment in relation to the cost risk for Grant James:

- (a) The adjournment and late production of documents has increased costs for Grant James;
- (b) Ms Villavicencio's evidence from the first day of the investigation meeting showed that she is a US Resident and is only residing in New Zealand on a temporary basis pending the outcome of this matter. Ms Villavicencio had worked in New Zealand on a work permit sponsored by Grant James but when

her employment ended with Grant James she was unable to secure new work. As a result she has decided she will not remain in New Zealand once this matter is resolved;

- (c) The evidence also shows that Ms Villavicencio has not earned any money since she worked for Grant James and she is relying on friends and the sale of some of her assets, such as her car, to fund her living costs here in New Zealand.

[4] So, there are increased costs for Grant James; the likelihood that Ms Villavicencio may leave New Zealand before any costs award can be enforced (if I determine that costs should be awarded to Grant James) leaving Grant James with a difficult enforcement issue due to locating Ms Villavicencio in the US and there not being any reciprocal enforcement arrangement with the US; and, in any event, Ms Villavicencio is impecunious and therefore unlikely to be able to pay any award of costs.

[5] In response to the application, the advocate for Ms Villavicencio says:

(a) I do not have jurisdiction to make an order for security for costs;

(b) There is no evidence of impecuniosity, so even if I decide that I have jurisdiction there is no basis to make such an order.

[6] There are two Authority determinations that deal with applications for security for cost, *Merennage v Ritchies Transport Holdings Limited*¹ and *Gomez v Rappongi Excursions Limited t/a Denny's Restaurants New Zealand*². In both of these determinations the members refer to the Employment Court decision in *Reid v NZ Fire Services Commission*³ in which the Court decided that the Employment Tribunal did not have jurisdiction to make an order for security for costs. Both members conclude that notwithstanding that the Court decision is

¹ [2014] NZERA Auckland 247

² [2014] NZERA Auckland 78

³ [1996] 1 ERNZ 228

about the Tribunal's powers the reasoning is applicable to the Authority, given the relevant statutory provisions creating the Authority and conferring powers on it. Both members determine that the Authority does not have jurisdiction to make an order for security for costs.

[7] I have considered the submissions received and the determinations of my fellow members and find there is no reason to displace their conclusions. I adopt both findings and conclude that I do not have jurisdiction to make an order for security for costs. The application is dismissed.

[8] I do however accept that there is a concern for Grant James and advise that the only step I can take to assist with a prompt collection of costs, if this is required, is that I will not reserve any determination on costs when I determine the substantive matter. I will hear submissions on costs with the other submissions for the parties at the conclusion of the evidence at the re-convened investigation meeting. The representatives should attend the investigation meeting prepared to make submissions on costs. I will then determine costs at the same time as I make my determination on the substantive matter.

Determination

[9] I decline Grant James Limited's application for an order for security for costs.

Costs

[10] Costs are reserved.

Peter van Keulen
Member of the Employment Relations Authority