

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2012] NZERA Wellington 140  
5378873

BETWEEN                      TE RANGI WROE  
   Applicant  
  
A N D                              CMP RANGITIKEI LIMITED  
   Respondent

Member of Authority:      G J Wood  
  
Representatives:              Simon Mitchell for Applicant  
   Glenn Jones for Respondent  
  
Investigation Meeting:      By way of submissions  
  
Submissions Received:      By 30 October 2012  
  
Date of Determination:      12 November 2012

---

**DETERMINATION OF THE AUTHORITY**

---

[1]      This application is for leave to reply to a personal grievance out of time. On 28 May 2012 the Authority received an application for unjustified dismissal from the applicant Mr Wroe, concerning his dismissal from the respondent (CMP/CMP Rangitikei) on 8 February 2012.

[2]      The statement in reply was due on 12 June 2012. A message was left for Mr Darryl McKenzie, CMP Rangitikei's General Manager, by the Authority's support staff. Later contact was made about the delay with him by email on 14 June 2012.

[3]      On 21 June 2012 Mr McKenzie replied stating that he had been out of the office and:

*"We have had some changes within our staff with my HR Manager resigning". This has slipped through the to do list. We will put urgent attention to it and revert as soon as possible.*

[4] In the meantime the applicant, seeking mediation, sought a direction to that effect. The Authority's support staff informed Mr Wroe's representative, Mr Mitchell, that Mr McKenzie had just told them that he was on annual leave until 10 July 2012.

[5] On 27 June 2012 CMP was informed that if it wished to reply it must seek permission of the Authority to do so in writing, providing the reasons for the delay. A follow up phone message was sent on 11 July.

[6] Mr McKenzie did reply on that day, copying in his present representative Mr Jones, stating that he hoped to have a reply through by end of business 12 July, and apologising for the delay to date.

[7] A statement in reply was provided on 13 July, denying that Mr Wroe's dismissal was unjustifiable and that CMP Rangitikei did not believe *that attending mediation will lead to a resolution*. There was no application for leave to apply out of time, although there was an email from Mr Jones apologising for it being late, and stating that it was his responsibility and not CMP's.

[8] Mr Mitchell objected to the statement in reply being accepted for filing prior to resolution of the issues before the Authority. I determined to deal with that issue by way of conference call. It was decided that it would be best to deal with matters in the first instance by mediation. Unfortunately, the matter was not resolved as a result of mediation.

[9] A further conference call was held on 2 October 2012, whereby the process for submissions on the leave issue was set in place. On behalf of CMP Rangitikei, Mr McKenzie stated by affidavit that he did not make arrangements, due to work pressures, for CMP's solicitors to be instructed on this matter prior to the date it was due, and indeed that he did not instruct them until 22 June 2012. He apologised for any inconvenience caused to the Authority or Mr Wroe's representative. He also noted that CMP believes it had good grounds for dismissing Mr Wroe.

[10] The dismissal related to actions taken by Mr Wroe following the return to work of a large number of union staff, following an extended lockout by CMP. It was alleged that he was dismissed for using offensive language towards management on the CMP Facebook page, where he ran down management and accused them of being liars and that he hated them, using offensive language.

[11] Mr Jones submitted that the delay had been explained, that Mr Wroe had suffered no prejudice and that CMP had a reasonable defence to the personal grievance.

[12] In response Mr Mitchell noted that no explanation was given for CMP's failure to instruct its solicitors between 11 June and 12 July. He also noted that CMP's explanation was not consistent, because Mr Jones when originally filing a statement in reply had said it was his responsibility for the delay. He also noted that Mr McKenzie had failed to respond, at least promptly, to correspondence and messages from the Authority. He therefore submitted that CMP has failed to adequately explain not only the failure to file the statement in reply in time, but also to do so thereafter, having been informed by the Authority of its responsibilities, and that this lack of explanation extends to the affidavit evidence. It was thus submitted that leave should not be granted because there was no good reason for the omission to respond and that the length of the delay was considerable.

[13] In response Mr Jones noted that Mr Wroe has not alleged any prejudice or hardship as a result of the delay. He also noted that should the Authority determine the matter in the absence of CMP it would exercise its challenge rights.

[14] This matter needs to be dealt with under the Employment Relations Authority Regulations 2000. Regulation 4 states:

- (1) *These regulations are not to be strictly interpreted or applied, but are to be interpreted and applied in a way that best enables the Authority -*
  - (a) *to support successful employment relationships and the good faith obligations that underpin them; and*
  - (b) *to determine the substantial merits of any case, without regard to technicalities; and*
  - (c) *to deliver speedy, informal and practical justice to the parties to any matter before it.*
- (2) *Subclause (1) does not limit the power of the Authority to give, in relation to any case before it, any directions that are necessary or expedient in the circumstances of the case.*

[15] Regulation 8 deals with statements in reply:

- (1) *Subject to any directions given by the Authority in relation to any particular case, the party who has been served with an application lodged under Regulation 5 or Regulation 10 or Regulation 12 and who intends to reply or respond to the application must, within 14 days after the date of the service of the application on that party, lodge with an officer of the Authority two copies of a statement in reply.*

- (2) *The statement in reply must be on Form 3.*
- (3) *If a party fails to lodge a statement in reply within the time specified in subclause (1), that party is entitled to reply or respond to the application only with the leave of the Authority.*
- (4) *Leave may be granted on such terms and conditions as the Authority thinks fit.*

...

### **Determination**

[16] Regulation 4 is consistent with the objects of the Act and the role of the Authority, as well as sections 219 and 221 of the Act, which deal with the validation of informal proceedings and joinders, waivers and extensions of time.

[17] In this case I am not satisfied that the delay has been adequately explained, given the conflicting explanations given for that delay. I conclude that the primary reason for the delay was that CMP did not give the filing of its statement in reply any priority, despite the legal obligation on it to do so. However, I am also satisfied that there is no prejudice arising to Mr Wroe as a result of CMP's failings. I also accept that CMP will participate fully in the investigation of the matter from now on and that should it fail to do so then there may be implications under s.181 and in costs.

[18] Furthermore, the issues to date may be dealt with in costs at the conclusion of the investigation process. Given the importance of the Authority being able to determine the substantial merits of the case and a lesser likelihood of that taking place in the absence of the involvement of CMP Rangitikei, I grant leave to the respondent to reply and to respond to the personal grievance raised by Mr Wroe.

**G J Wood**  
**Member of the Employment Relations Authority**