

Reference No. HRRT 002/2018

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN ASHOR GORGES

PLAINTIFF

AND SERCO NEW ZEALAND LIMITED

DEFENDANT

AT WELLINGTON

BEFORE:

Mr RPG Haines QC, Chairperson

Mr RK Musuku, Member

Mr BK Neeson JP, Member

REPRESENTATION:

Mr G Robins for plaintiff

Mr H Wilson and Ms L Clark for defendant

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 6 April 2018

**DECISION OF TRIBUNAL REFERRING COMPLAINT BACK TO
HUMAN RIGHTS COMMISSION AND RELATED ORDERS¹**

Introduction

[1] Serco New Zealand Ltd (Serco) operates Auckland South Corrections Facility (ASCF) under a public-private partnership with the Department of Corrections.

¹ [This decision is to be cited as: *Gorges v Serco New Zealand Ltd (Referral back to Human Rights Commission)* [2018] NZHRRT 12]

[2] Mr Gorges alleges that while a prisoner at ASCF he was subjected to sexual harassment by ASCF staff. When he lodged his complaint with the Human Rights Commission attempts at mediation failed. Mr Gorges and Serco have different perspectives as to the reasons for that failure and no good purpose would be served by attempting a summary.

[3] What is more relevant is that when these proceedings were filed by Mr Gorges on 18 January 2018 he was self-represented. That position has recently changed. By email dated 28 March 2018 Mr Robins, Senior Solicitor at the Office of Human Rights Proceedings, has given notice that the Director of Human Rights Proceedings has recently accepted an application for representation by Mr Gorges in these proceedings. Mr Robins has further advised that Mr Gorges consents to the Tribunal making an order referring the complaint back to the Human Rights Commission for mediation.

[4] Happily, by email dated 28 March 2018 the solicitors for Serco have confirmed Serco also agrees to the Tribunal referring this complaint back to the Commission for mediation.

Discussion

[5] Section 92D of the Act relevantly provides:

92D Tribunal may refer complaint back to Commission, or adjourn proceedings to seek resolution by settlement

- (1) When proceedings under section 92B are brought, the Tribunal—
 - (a) must (whether through a member or officer) first consider whether an attempt has been made to resolve the complaint (whether through mediation or otherwise); and
 - (b) must refer the complaint under section 76(2)(a) to which the proceedings relate back to the Commission unless the Tribunal is satisfied that attempts at resolution, or further attempts at resolution, of the complaint by the parties and the Commission—
 - (i) will not contribute constructively to resolving the complaint; or
 - (ii) will not, in the circumstances, be in the public interest; or
 - (iii) will undermine the urgent or interim nature of the proceedings.
- (2) The Tribunal may, at any time before, during, or after the hearing of proceedings, refer a complaint under section 76(2)(a) back to the Commission if it appears to the Tribunal, from what is known to it about the complaint, that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation).
- (3) The Tribunal may, instead of exercising the power conferred by subsection (2), adjourn any proceedings relating to a complaint under section 76(2)(a) for a specified period if it appears to the Tribunal, from what is known about the complaint, that the complaint may yet be able to be resolved by the parties.

[6] As Mr Gorges and Serco ask that the complaint by Mr Gorges be referred back to the Human Rights Commission, the requirements of s 92D(2) are satisfied. That is, it appears to the Tribunal from what is known to it about the complaint that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation).

Conclusion

[7] As the statutory criteria in s 92D(2) have been satisfied the complaint is to be referred back to the Commission. There is a clear interest in the parties seeking to resolve their differences informally before engaging the Tribunal's adversarial litigation process.

ORDERS

[8] For the reasons given the following orders are made:

[8.1] Pursuant to s 92D(2) of the Human Rights Act 1993 the complaint by Mr Gorges is referred back to the Human Rights Commission for resolution by the parties and the Commission (whether through mediation or otherwise).

[8.2] So the proceedings are not left in suspension indefinitely, the parties are to provide the Tribunal with a progress report in six months time. Such report must be filed no later than 5pm on Friday 26 October 2018.

[8.3] The proceedings before the Tribunal are stayed in the interim with leave reserved to all parties to seek further directions if and when the need arises.

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Mr RPG Haines QC
Chairperson

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Mr RK Musuku
Member

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Mr BK Neeson JP
Member