

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2010] NZEMPC 40  
ARC 1/10  
ARC 9/10**

**ARC 1/10**

IN THE MATTER OF a de novo challenge to a determination of  
the Employment Relations Authority

AND IN THE MATTER OF an application by the plaintiff that the  
defendant may defend the claim in  
ARC 1/10 only with the leave of the Court

**ARC 9/10**

IN THE MATTER OF an application to have proceedings  
removed

BETWEEN

NING (NEIL) WANG  
Plaintiff

AND

HAMILTON MULTICULTURAL  
SERVICES TRUST  
Defendant

Hearing: 16 April 2010  
(Heard at Auckland)

Appearances: Ning (Neil) Wang, plaintiff  
Ellie Wilkinson, representing the defendant  
Tania Lynn Pointon, Finance Manager  
Jovi Abellanosa, Director of Hamilton Multicultural Services Trust

Judgment: 16 April 2010

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**ORAL INTERLOCUTORY JUDGMENT OF JUDGE B S TRAVIS**

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[1] The plaintiff has filed a submission seeking an order that the defendant may defend the claim in ARC 1/10 only with the leave of the Court.

[2] Mr Wang has claimed that he was not served with a statement of defence in his challenge in ARC 1/10 until 17 March 2010, when the original statement of defence had been filed in Court on 5 February 2010, but then not served on him “as soon as practicable”, in terms of regulation 19(3) of the Employment Court Regulations 2000.

[3] The plaintiff has conceded that he has received a copy of the defendant’s statement of defence in his other proceedings, a removal from the Employment Relations Authority in ARC 9/10, in a timely fashion.

[4] The defendant has responded claiming that the copy of the statement of defence in ARC 1/10 was sent by mail to the plaintiff on 3 February 2010, at the same time as it was filed in Court by mail. The defendant stated that both the defendant and the plaintiff received a letter from the Employment Court dated 8 February 2010 acknowledging receipt of the statement of defence which should have put the plaintiff on notice. At this time the defendant claims it was unaware that the plaintiff had not received his copy of the statement of defence.

[5] The Chief Judge, after a telephone conference callover held on 16 March 2010, noted that there was some confusion as to whether the defendant had served a copy of the statement of defence in ARC 1/10 on the plaintiff. He recorded that the defendant’s representative would send a copy of the statement of defence in that proceeding to the plaintiff at his address but left open the opportunity for the plaintiff to argue that the statement of defence was not served on him in accordance with the regulations.

[6] Having received and considered the submissions from the parties I am left in a position where I have no evidence by way of affidavit, to establish the various statements made by the plaintiff and the defendant.

[7] If, as the defendant states, it did send a copy of the statement of defence on 3 February 2010, to the plaintiff by post then service, by way of ordinary mail, where the plaintiff had given an address for service, is an acceptable means by which

service may be affected, see reg 28(2)(b)(vi). If the document was not received the blame for this could not be ascribed to the defendant.

[8] In these circumstances I cannot determine whether, as a matter of fact, the plaintiff was not properly served. Because I am satisfied the plaintiff received a copy of the statement of defence in his other claim and, following the telephone chambers conference, received a copy of the statement of defence in ARC 1/10, if leave is required for the defendant to be able to defend that challenge, I grant leave accordingly.

B S Travis  
Judge

Oral judgment delivered at 10.08am on 16 April 2010