

claim was not filed until 4 May 2012 and the filing fee was not received by the Registry until 9 May 2012. Leave is, therefore, required to commence the challenge out of time.

[3] In my judgment in WRC 14/12, I summarised the facts of the case and the Authority's conclusions. There is no need for me to repeat what I said. The particular facts of the Authority's determination Mr Doherty seeks to challenge are its findings that he was Mr Rimene's employer and not Natusch Group Limited and its failure to take into account monies allegedly owed by Mr Rimene to both Mr Doherty and Natusch Group Limited.

[4] In his supporting affidavit Mr Doherty, who is domiciled in New South Wales, Australia, states:

2. I forwarded a Statement of Claim, a copy of the determination of the Employment Relations Authority and an Australian bank draft for the filing fee by international courier on 2 May 2012 (within 28 days of the original decision)
3. I also forwarded a copy of the Statement of Claim, a copy of an international bank draft for the filing fee and receipt for the international courier by email on the same day.
4. I am informed by the Registry that although they received the Statement [of] Claim within the prescribed time they did not receive the international bank draft within the required time.

[5] In his submissions in opposition to Mr Doherty's application, Mr Parker, counsel for the respondent states:

4. The respondent submits that the applicants' Statement of Claim was filed out of time, as was their own, and that this was no more than an oversight by the applicants, as in fact it was for the respondent.
5. Mr Doherty is, or at least was, a practising solicitor in Australia and is fully aware that representing himself in these proceedings in New Zealand creates for him the risk that he will be unfamiliar with law and practices in New Zealand, and that in order to safeguard against those differences he needs to retain New Zealand counsel in relation to this matter. During the hearing in the Authority of this matter it was also stated on at least one occasion that he should have retained New Zealand counsel given his unfamiliarity with New Zealand Employment Law. Notwithstanding this Mr Doherty has decided to proceed with self-representation all throughout this matter including the election to take this matter to the Employment Court.

6. The respondent submits that given the above Mr Doherty cannot now rely on his assertions that his situation should be treated any differently to any other represented person dealing with the Court.
7. The respondent submits that it would be inequitable and unjust to allow the applicants' appeal to proceed without allowing its own application to proceed. Both parties have filed their elections out of time in error and both sought to correct the matter without delay.

[6] As noted in my contemporaneous judgment in WRC 14/12, the Court has a broad discretion under s 219 of the Act to make an order extending the 28-day limitation period prescribed in s 179(2) for commencing a challenge but, as with all discretions, it must be exercised judicially and in accordance with established principles. As in the case of Mr Rimene, the delay on Mr Doherty's part was absolutely minimal and, although he could be criticised for not forwarding the documentation by international courier from Australia until the very last day, no resulting prejudice is claimed by the respondent.

[7] The thrust of Mr Parker's submissions appears to be that the delay in both cases was the result of an oversight and that it would be unjust to allow one party to challenge out of time and not the other. I agree. Mr Doherty's application for leave is accordingly granted. Costs are reserved.

[8] I draw the attention of both parties to the concluding paragraphs of my judgment in WRC 14/12. They can now expect to be contacted by the Registrar to arrange a further telephone conference in order to progress the proceedings.

A D Ford
Judge

Judgment signed at 9.30 am on 10 October 2012