

**IN THE EMPLOYMENT COURT
CHRISTCHURCH**

**[2012] NZEmpC 181
CRC 21/12**

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

BETWEEN SUB 5 PRIVATE SECURITY LIMITED
Plaintiff

AND ROBERT GOMEZ
Defendant

Hearing: 15 October 2012
(Heard at Christchurch)

Appearances: No appearance for the plaintiff
Georgina Burness, advocate for the defendant

Judgment: 15 October 2012

JUDGMENT OF JUDGE A A COUCH

[1] On 29 May 2012, the Employment Relations Authority determined that the defendant, Mr Gomez, had been unjustifiably dismissed by the plaintiff company¹. He was awarded remedies totalling \$3,681.52.

[2] The plaintiff challenged that determination. The pleadings required amendment but, otherwise, the matter proceeded in a conventional manner. On 15 August 2012, I conducted a directions conference with the representatives of the parties. The plaintiff was represented by Barry Kay, one of its directors. The defendant was represented by Mrs Burness. In the course of the conference, I gave a series of directions by agreement. These included a requirement that briefs of the evidence to be given by the plaintiff's witnesses be filed and served by 4pm on Friday 28 September 2012. I also directed that the matter be heard in Christchurch

¹ [2012] NZERA Christchurch 105

on a date to be fixed by the Registrar. These and other directions were confirmed in a written minute sent by post later that day to the parties at their addresses for service.

[3] On 26 September 2012, the Registrar sent the parties a notice of hearing. This recorded that the matter would be heard in Courtroom 7 of the Christchurch District Court at 282 Durham Street, Christchurch on Monday 15 October 2012, beginning at 9.30am.

[4] No briefs of evidence were filed on behalf of the plaintiff within the time limit allowed. On 2 October 2012, the Registrar sent an email to Mr Kay reminding him of the obligation to provide those briefs. There was no response. The following day, the Registrar attempted to telephone Mr Kay at the cell phone number he had provided. The call was not answered so a message was left. The Registrar again tried to call Mr Kay on 8 October 2012. Again, there was no answer and a second message was left.

[5] The hearing was duly commenced at 9.30am this morning. Mr Gomez and Ms Burness were present. There was no appearance for the plaintiff. At approximately 9.40am, I adjourned and had the registrar again try to contact Mr Kay by telephone. He did not answer and people at the plaintiff's business were unable to say where he was. When I resumed the Court about 10 minutes later, there was still no appearance on behalf of the plaintiff.

[6] I am satisfied that Mr Kay had notice of the hearing today. At the conference on 15 August 2012, Mr Kay acknowledged receiving documents sent to him at the address for service given in the statement of claim. The notice of hearing was sent to that address at the same time a copy was sent to Mrs Burness. She confirmed she had received it. Mr Kay was undoubtedly aware of the plaintiff's obligation to provide briefs of evidence by 28 September 2012 as he explicitly agreed to that date in the course of the telephone conference. Despite that, he failed to comply with the direction.

[7] The plaintiff's challenge is dismissed for want of prosecution. The Authority's determination is confirmed.

[8] Costs are reserved. Mrs Burness is to file a memorandum as to costs by 4pm on Monday 22 October 2012.

AA Couch
Judge

Signed at 3.30pm on 15 October 2012.