

**IN THE EMPLOYMENT COURT
WELLINGTON**

**[2013] NZEmpC 177
WRC 15/13**

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

BETWEEN KERERU INVESTMENTS LIMITED
 Plaintiff

AND SAMARA ANN MEADS
 Defendant

Hearing: (on the papers)

Judgment: 27 September 2013

JUDGMENT OF JUDGE A D FORD

[1] On 25 June 2013, the plaintiff filed a statement of claim in this Court challenging by way of de novo hearing the whole of a determination of the Employment Relations Authority (the Authority) dated 28 May 2013.¹ The determination had found that the plaintiff was Ms Meads' employer and that Ms Meads had been unjustifiably suspended and dismissed. The Authority ordered Kereru Investments Ltd to pay Ms Meads various amounts totalling \$9,175 plus filing fees. The statement of claim was filed by Mr Scott Guthrie who the Authority noted was one of two directors of the plaintiff company. The other was Ms Michelle Guthrie.

[2] In a minute dated 27 June 2013, Chief Judge Colgan requested what is commonly referred to as a "good faith report" pursuant to s 181 of the Employment Relations Act 2000 (the Act). The report was sought on the basis that the determination had recorded a failure by the plaintiff to participate in the Authority's

¹ [2013] NZERA Wellington 61.

investigation meeting and to take part in a pre-arranged telephone conference. Filing of the statement of defence was waived pending receipt of the Authority's report.

[3] A final good faith report was received from the Authority Member on 24 July 2013. The report concluded:

[6] Kereru was not represented at the Authority's investigation meeting and did not attend. There was no good cause identified, despite contact by the Authority's office. The investigation meeting went ahead after a delay to the start to enable Kereru time to get to the investigation meeting.

[7] Kereru's failure to reply and respond to the statement of problem meant that the Authority did not have the benefit of any evidence of Kereru's version of the facts. Kereru's failure to file wage time and holiday records has not assisted the Authority either.

[8] Ms Meads endeavoured to do her best to correspond with Mr Guthrie and try to resolve the employment relationship problem including requesting him to attend mediation. This failed because in the end Mr Guthrie did not reply and did not agree to attend mediation voluntarily and took no action to help facilitate it. This was unreasonable, and I conclude did not assist Ms Meads, I hold.

[9] I conclude that Kereru has not facilitated the Authority's investigation and did not assist Ms Meads. Kereru's acts and omissions mean that Kereru has not acted in good faith toward the applicant.

[4] On 26 July 2013, I issued a minute to the parties confirming the conclusions of the Authority's good faith report. I noted that under s 182(2) of the Act, where the Court is satisfied that the person challenging the Authority's determination did not participate in the investigation in a manner that was designed to resolve the issues involved, it can issue directions as to the nature and extent of the hearing.

[5] Accordingly, my minute invited the defendant, Ms Meads, to file a memorandum setting out her views as to the appropriate nature and extent of the hearing and the plaintiff was given seven days from the date of service of such memorandum in which to respond.

[6] Ms Meads duly filed her memorandum on 31 July 2013 in which she requested, pursuant to cl 15(1) of sch 3 of the Act, that the plaintiff's application for a de novo hearing be dismissed by the Court as being frivolous and vexatious. Ms Meads drew the Court's attention to the fact that Mr Guthrie had previously been

a bankrupt, having been discharged on 5 March 1999, and that an application by the Commissioner of Inland Revenue to put Kereru Investments Ltd into liquidation had been filed in the High Court at Palmerston North on 19 April 2013. No further information has been provided to the Court regarding the liquidation application.

[7] A copy of Ms Meads' memorandum was served on Kereru Investments Ltd on 31 July 2013 and an affidavit of service was provided to the Court.

[8] On 12 August 2013, I issued a further minute expressing concern that no response had been received from the plaintiff to my minute of 26 July 2013 or to Ms Meads' memorandum. I requested a response within four days of receipt of the minute and noted that unless that order was strictly complied with then the proceedings would be struck out.

[9] No response was received from the plaintiff. Indeed, the Court has heard absolutely nothing from the plaintiff since its statement of claim was filed back in June 2013.

[10] In all the circumstances, I am satisfied that the plaintiff's challenge to the Authority's determination was both frivolous and vexatious and the matter is hereby dismissed.

A D Ford
Judge

Judgment signed at 11.30 am on 27 September 2013