

**IN THE EMPLOYMENT COURT
CHRISTCHURCH**

**[2018] NZEmpC 150
EMPC 86/2018**

IN THE MATTER OF proceedings removed from the Employment
Relations Authority

AND IN THE MATTER of an application for further and better
particulars

BETWEEN ANNA MOLENAAR
Plaintiff

AND RIGG STUFF LIMITED
Defendant

Hearing: On the papers

Appearances: K Murray, advocate for plaintiff
P Butler, advocate for defendant

Judgment: 14 December 2018

**INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH
(Application for further and better particulars)**

[1] Anna Molenaar has issued proceedings against Rigg Stuff Ltd seeking compensation for several personal grievances she alleges arose during, and at the conclusion of, her employment.

[2] Rigg Stuff denies each of the claims and maintains that the statement of claim does not fully and fairly inform it of the issues to be decided.

[3] The statement of claim is divided between a personal grievance for unjustified dismissal and other personal grievance claims including alleging unjustifiable action

by Rigg Stuff. The first alleged grievance, for unjustified dismissal, is pleaded in paragraph [1.1] of the statement of claim. The disadvantage personal grievances are pleaded in paragraph [1.2], which contains five numbered sub-paragraphs each one of which is a separate grievance relating to alleged failures by Rigg Stuff to pay money said to be owed to Ms Molenaar. Each of those sub-paragraphs begins with the words “personal grievance” followed by brief details of each claim.

[4] A separate personal grievance is alleged in paragraph [1.3] of the statement of claim, pleading that Ms Molenaar was subjected to a breach of s 4(1)(b) of the Employment Relations Act 2000 (the Act). The pleading is that Rigg Stuff entered into an undescribed course of action which was misleading or deceptive, or was likely to mislead or deceive her. The pleading does not state what conduct was misleading or deceptive or was likely to mislead or deceive her.

[5] Paragraph [1.4] of the statement of claim pleads that Ms Molenaar suffered a personal grievance when she was subjected to a breach of s 4(1A)(b) because Rigg Stuff failed to be active and constructive in establishing and maintaining a productive employment relationship and was not responsive and communicative. No other information explaining the pleading was provided.

[6] Paragraph [1.5] pleads another personal grievance arising from a breach of s 4(1A)(c) of the Act. The alleged breach was that Rigg Stuff proposed to make a decision that would, or was likely to, have an adverse effect on the continuation of Ms Molenaar’s employment. The wording is imprecise, but the pleading is an allegation that access to unspecified information, and an opportunity to comment on that information, was not provided to her.

[7] Completing this part of the statement of claim are pleadings seeking a penalty under s 135 of the Act for Rigg Stuff's alleged failure to comply with an obligation to keep time and wage records. As with the other pleadings, this claim is an alleged personal grievance.

[8] The balance of the statement of claim contains a narrative of 61 paragraphs under the heading "Particulars of claim". These paragraphs are general pleadings about the formation of the employment relationship, Ms Molenaar's concerns about the financial position of Rigg Stuff, and about the possibility of payment of redundancy compensation. These paragraphs do not cross reference to the pleadings in paragraphs [1.1]-[1.5] inclusive and are best described as providing some context to the overall case Ms Molenaar intends to present.

The application for further and better particulars

[9] Rigg Stuff applied for extensive further and better particulars of each of the pleadings in paragraphs [1.1]-[1.5] of the statement of claim. The particulars sought included how and when each of the alleged personal grievances was raised. In relation to each of the pleaded personal grievances the application goes further, by seeking extensive additional particulars requiring Ms Molenaar to provide information about matters such as the remedies she sought for the grievances and the action taken for, or on behalf of, Rigg Stuff in response to the grievances being raised.

[10] Ms Molenaar opposed the application. The grounds of her notice of opposition are a narrative of events and a statement about the issue before the Court. It is possible that this notice is intended to explain how, and when, the personal grievance or grievances were raised because it refers, without details, to an email sent on her behalf

to Rigg Stuff's representative, by her former representative, dated 28 March 2017. The issue identified in this notice is whether she was unjustifiably dismissed or subjected to an unjustifiable action by Rigg Stuff failing to pay wages and commission.

[11] Rigg Stuff filed submissions in support of the application to comply with the Court's directions. No submissions were filed for Ms Molenaar. In the absence of her submissions it is difficult for the notice of opposition to be given much weight.

The regulations

[12] The starting point is reg 11 of the Employment Court Regulations 2000 (the Regulations) which provides:

11 Statement of claim

- (1) Every statement of claim filed under regulation 7 or regulation 8 must specify, in consecutively numbered paragraphs,—
 - (a) the general nature of the claim;
 - (b) the facts (but not the evidence of the facts) upon which the claim is based;
 - (c) any relevant employment agreement or employment contract or legislation and any provisions of the agreement or the contract or the legislation that are relied upon;
 - (d) the relief sought, including, in the case of money, the method by which the claim is calculated;
 - (e) the grounds of the claim:...
- (2) The matters listed in subclause (1) must be specified with such reasonable particularity as to fully, fairly, and clearly inform the court and the defendant of—
 - (a) the nature and details of the claim; and
 - (b) the relief sought; and
 - (c) the grounds upon which it is sought....

[13] Regulation 11 requires that a party bringing a claim must fully, fairly and clearly inform the Court and the other party of the nature and facts of the claim, any

agreement or legislation relied on, the relief sought, and the grounds on which it is sought.

[14] In *Lorigan v Infinity Automotive Ltd*, Judge Corkill referred to the absence of a regulation empowering the Court to order more explicit pleadings to be filed to remedy a failure to comply with reg 11.¹ *Lorigan* assessed the adequacy of a pleading by asking the following questions:²

- (a) Has sufficient information been provided to inform the other party of the case to enable them to take steps to respond?
- (b) Is there a real risk that the other party may face a trial by ambush if further particulars are not provided?
- (c) Is the request oppressive or an unreasonable burden upon the party concerned?

[15] What has prompted the application for further and better particulars is that the statement of claim is written as if Ms Molenaar is seeking to recover money she claims is owed to her and the alleged debt gives rise to personal grievances. In a general sense, Rigg Stuff denies the pleaded indebtedness and it disputes that the circumstances of this case could give rise to personal grievances. The statement of defence places in issue compliance with ss 114(1) and (2) of the Act.

¹ *Lorigan v Infinity Automotive Ltd* [2017] NZEmpC 153 at [20]. The Court applied High Court rule 5.21 in accordance with reg 6 of the Regulations.

² At [23]; relying on *Body Corporate 74246 v QBE Insurance (International) Ltd* [2015] NZHC 1360 at [18](h).

[16] Rigg Stuff's application and the relevant paragraphs from the statement of claim are discussed below.

Paragraph [1.1] of the statement of claim

[17] In paragraph [1.1] of the statement of claim the pleading is that Ms Molenaar was unjustifiably dismissed by Rigg Stuff. There are no particulars in this paragraph explaining why she claims to have been unjustifiably dismissed. That part of the statement of claim containing general pleadings touches on areas of her dissatisfaction, but details of the dismissal, and why it was said to give rise to a personal grievance, were sparsely stated. Those details are confined to paragraph [55] pleading that, on 11 April 2017, she received an email terminating her employment by reason of redundancy with effect from 19 May 2017.

[18] Rigg Stuff's application listed nine requests where further and better particulars about this pleading as follows:

1. ...
 - i. When the plaintiff claims her employment came to an end;
 - ii. The date upon which the grievance was raised;
 - iii. The identity of the person who raised the grievance;
 - iv. The medium used for raising the personal grievance;
 - v. The actions or inactions on the part of the defendant which gave rise to the personal grievance;
 - vi. The actions she requested the defendant take to remedy the personal grievance.
 - vii. The actions, if any, the defendant took to remedy the grievance or otherwise respond to the raising of the grievance;
 - viii. The medium used by the defendant when conveying to the plaintiffs the defendant's action or response; and

ix. The date of such response or action.

[19] The first paragraph of the application seeks particulars about when Ms Molenaar claims her employment came to an end. That information is contained in paragraph [55] of the statement of claim and is stated in a way that is sufficient to fully and fairly inform Rigg Stuff to enable it to respond.

[20] The remainder of Rigg Stuff's application can be divided into two parts; seeking particulars about what circumstances created a personal grievance and when, and how, one was raised (that is, paragraphs [1](ii), (iv) and (v) of the application). Who raised this grievance, and how Rigg Stuff is said to have responded, is the combined effect of the remaining paragraphs of the application (that is, paragraphs [1](iii), (vi)-(ix) inclusive). Rigg Stuff's application essentially repeats the same detailed requests for further and better particulars for each of the pleaded personal grievances with only minor modifications. That part of the application seeking particulars of when, and how, each personal grievance was raised is reasonable to ensure compliance with reg 11 (that is, paragraphs [1](ii) and (iv) of the application) but the balance of it goes beyond the ambit of that regulation.

[21] Aside from stating the date of Ms Molenaar's dismissal paragraph [1.1] of the statement of claim is deficient because it does not contain any pleading about the facts, or circumstances, that made the dismissal unjustified. As presently pleaded Rigg Stuff has no information about the claim it is to meet.

Paragraph [1.2](i) of the statement of claim

[22] In this paragraph a personal grievance under s 103(1)(b) of the Act is pleaded as having arisen because of a failure to pay Ms Molenaar wages according to an agreement made to reduce them from the first week in March 2014, until “bank issues” were resolved on 20 September 2014. The allegation is denied by Rigg Stuff which pleaded in its defence that it had paid what was owed.

[23] Rigg Stuff has sought further and better particulars about the date of the agreement to reduce the weekly wage, the form of the agreement, and the amount of it. The application also seeks particulars about the date on which Rigg Stuff failed to pay the reduced wage, and the date Ms Molenaar became aware of that failure to pay. Part of the application about the pleading in this paragraph repeats the extensive requests for particulars made in relation to paragraph [1.1], such as the identity of the person who raised the grievance and the actions, if any, Rigg Stuff was said to have taken to remedy it.³

[24] The statement of claim contained sufficient information to fully and fairly inform Rigg Stuff about the date of the agreement to reduce wages. The pleading clearly says the agreement was to apply to wages payable from March 2014, which is sufficient information to enable Rigg Stuff to understand the claim and respond to it. While the statement of claim did not plead whether the agreement was in writing or oral (the “form” of the agreement sought by Rigg Stuff) the company has pleaded an affirmative defence (that it has paid what was owed) indicating the pleading was sufficient to inform it of the claim and it has been able to respond.

³ At [18] and [20] of this judgment.

[25] As to the balance of the application, what is sought goes beyond what is required by reg 11 to fully and fairly inform Rigg Stuff of the claim.

Paragraph [1.2](ii) of the statement of claim

[26] In this pleading the personal grievance alleged is that Rigg Stuff unilaterally amended the terms and conditions of Ms Molenaar's employment agreement and breached an agreement for a temporary reduction in pay by failing to reinstate her original pay. The failure is said to have continued from 20 September 2014 until 19 May 2017.

[27] The application seeks particulars about the date on which Ms Molenaar became aware of the failure to reinstate her pay, in addition to the same detailed information about who raised the grievance and what action was taken by Rigg Stuff in response.⁴

[28] The pleading is that Ms Molenaar's pay was not reinstated. On that basis the date on which she became aware of the failure to reinstate her pay is not relevant to the claim.

[29] As to the balance of the application about this pleading, what is sought repeats essentially the same extensive requests made in relation to the other personal grievances and the same analysis applies.⁵ Paragraph [1.2](ii) satisfies reg 11.

⁴ At [18] and [20] of this judgment.

⁵ At [18] and [20] of this judgment.

Paragraph [1.2](iii) of the statement of claim

[30] In this paragraph Ms Molenaar pleaded that Rigg Stuff failed to pay her an initial bonus from April 2014, which was due on 20 September 2014, but it was not paid until 19 May 2017. Rigg Stuff's application seeks further and better particulars about the date on which she became aware of the failure to pay the initial bonus.

[31] The pleading is about an alleged delay in payment. On that basis, when she became aware of the failure to pay is irrelevant. Furthermore, the dates giving rise to the delay are stated in the pleading. This part of the pleading satisfies reg 11.

[32] As to the balance of the application about this pleading, what is sought repeats essentially the same extensive requests made in relation to the other personal grievances and the same analysis applies.⁶

Paragraph [1.2](iv) of the statement of claim

[33] This pleading is that Ms Molenaar suffered a personal grievance because Rigg Stuff failed to pay the first quarter bonus due to her. The pleading is that an agreement was reached that payment would be delayed from when it was due in July 2014 until bank account issues were resolved in September 2014, but it was never paid. It is not clear if this pleading repeats earlier paragraphs in the statement of claim or is an allegation of a different breach.

[34] The first of the further particulars sought by Rigg Stuff is about the date when Ms Molenaar became aware of the failure to pay the bonus. That information is not

⁶ At [18] and [20] of this judgment.

necessary to satisfy reg 11 because the issue is of a failure to pay. It follows that the date when Ms Molenaar became aware of that failure is not relevant.

[35] The balance of the application seeks essentially the same extensive particulars requested as for all of the other personal grievances, about the actions alleged to have been taken by Rigg Stuff.⁷ The same analysis applies.

Paragraph [1.2](v) of the statement of claim

[36] In this paragraph Ms Molenaar pleaded a personal grievance because Rigg Stuff is alleged to have failed to pay her agreed bonuses for July to September 2014, October to December 2014, January to March 2015, March to June 2015, July to September 2015, October to December 2015, January to March 2016, April to June 2016, July to September 2016, October to December 2016 and January to March 2017.

[37] Rigg Stuff has sought further particulars about the performance targets set for each quarter when a bonus was pleaded as payable, the sales results for each quarter, the medium by which Ms Molenaar was notified of the sales measured against the target, the date of such notifications and the date each quarterly bonus was due to be paid as well as when Ms Molenaar became aware that it had not been paid.

[38] The pleading is a claim by Ms Molenaar that Rigg Stuff failed to pay money due to her on stated dates. That is sufficient information to fully and fairly inform Rigg Stuff about the claim it is to answer. Furthermore, Rigg Stuff's statement of defence denied that anything is owed, and pleaded that there was no agreement requiring it to pay bonuses for the stated periods. That must mean the pleading was

⁷ At [18] and [20] of this judgment.

sufficient to inform the company of the claim. Furthermore, given that the claim is about a failure to pay, information about sales targets and sales performance is irrelevant to fully and fairly inform Rigg Stuff about the case it is to answer.

[39] Rigg Stuff applied for essentially the same extensive further and better particulars it sought for all other personal grievances and the same analysis applies.⁸

Paragraph [1.3] of the statement of claim

[40] In this paragraph the pleading is that Rigg Stuff took a course of action to mislead or deceive Ms Molenaar or was likely to mislead or deceive her. No other information was provided.

[41] The application for further particulars seeks the date on which Rigg Stuff was said to have entered into that course of action, the action that is said to give rise to the claim, and the date the action was taken. The same extensive request for further particulars was made about this personal grievance as for the other grievances and the same analysis applies.⁹

[42] The pleading in paragraph [1.3] is deficient because it does no more than repeat aspects of the duty of good faith in s 4 of the Act without explaining the breach that was said to have occurred. While the statement of claim contained pleadings that generally described dealings between Ms Molenaar and Rigg Stuff, they were not linked to this pleading and could not be said to relate to it except in the very broadest sense. The pleading does not contain adequate information about the action attributed

⁸ At [18] and [20] of this judgment.

⁹ At [18] and [20] of this judgment.

by Ms Molenaar to Rigg Stuff so that the company is fully and fairly informed of the alleged misleading or deceptive conduct it is alleged to have engaged in and to answer.

[43] Rigg Stuff is entitled to further particulars of the course of action it is said to have engaged in and when it occurred including, if it is to be alleged that the conduct occurred over time, what that interval was.

Paragraph [1.4] of the statement of claim

[44] Paragraph [1.4] is an allegation of a breach of s 4(1A)(b) of the Act giving rise to a personal grievance. The pleading is that Rigg Stuff failed to be active and constructive in establishing a productive employment relationship. There are no particulars in the pleading explaining what conduct is said to have breached this section of the Act. Nothing in the general pleadings explains this claim or provides particulars to enable Rigg Stuff to prepare a response.

[45] The pleading is deficient because it failed to provide any particulars to explain how the duty of good faith relied on was breached, or how that breach gave rise to a personal grievance. Rigg Stuff is entitled to further particulars of the way in which it is alleged to have behaved that was a failure to be responsive and communicative in its dealings with Ms Molenaar. While Rigg Stuff did not specify what information it sought, reg 11 will only be satisfied if the further particulars supplied fully and fairly describe the circumstances or events which are relied on to support this pleading.

[46] In addition, Rigg Stuff sought essentially the same extensive further particulars about the actions alleged to have been taken by it in response to the personal grievance being raised. The same analysis applies.¹⁰

Paragraph [1.5] of the statement of claim

[47] This paragraph is a pleading alleging a breach of the duty of good faith in s 4(1A)(c) of the Act giving rise to a personal grievance. It appears to be a pleading that Rigg Stuff did not comply with the duty of good faith by not providing access to information or an opportunity to comment on information, relevant to the continuation of Ms Molenaar's employment. The information referred to was not identified or described in this paragraph or in the balance of the statement of claim.

[48] The pleading is inadequate and does not comply with reg 11. Rigg Stuff is entitled to be fully and fairly informed of the basis for the pleaded breach of duty.

[49] As to the personal grievance raised in this pleading, Rigg Stuff seeks essentially the same extensive further and better particulars as it has requested in relation to all other personal grievances.¹¹ The same analysis applies.

Conclusion

[50] Rigg Stuff's application has been partly successful and orders are made that Ms Molenaar must supply further and better particulars of her statement of claim as follows:

¹⁰ At [18] and [20] of this judgment.

¹¹ At [18] and [20] of this judgment.

- (a) For paragraph [1.1] of the statement of claim, the facts or circumstances relied on as giving rise to a personal grievance for unjustified dismissal.
- (b) For paragraph [1.3] of the statement of claim, particulars of the course of action taken by Rigg Stuff said to have misled or deceived her, or have been likely to mislead or deceive her, and the date, or dates, when that occurred.
- (c) For paragraph [1.5] of the statement of claim, particulars of the relevant information Rigg Stuff did not provide access to, or an opportunity to comment on, in breach of s 4(1A)(c) of the Act.
- (d) For all of the personal grievances, particulars of:
 - (i) when each of them was raised with Rigg Stuff; and
 - (ii) how each of them was raised.

[51] The further and better particulars ordered in paragraphs [50](a)-(d) inclusive are to be provided within 20 working days of the date of his judgment.

[52] Leave is reserved to apply for further or other orders.

[53] Costs are reserved.

K G Smith
Judge

Judgment signed at 3:55 pm on 14 December 2018