

Reference No. HRRT 034/2015

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN SUE BRIGHT

PLAINTIFF

AND FRANK MACKERETH

FIRST DEFENDANT

AND SHANE KENNEDY

SECOND DEFENDANT

AND TED FULLER

THIRD DEFENDANT

AT WELLINGTON – ON THE PAPERS

BEFORE:

Mr RPG Haines QC, Chairperson

Dr SJ Hickey MNZM, Member

Mr BK Neeson JP, Member

REPRESENTATION:

Ms S Bright in person

Mr R Dagger as agent for all defendants

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 4 July 2016

**DECISION OF TRIBUNAL REFERRING COMPLAINT BACK TO
HUMAN RIGHTS COMMISSION AND RELATED ORDERS¹**

¹ [This decision is to be cited as: *Bright v MacKereth (Referral back to Human Rights Commission)* [2016] NZHRRT 24]

Introduction

[1] On 24 January 2013 the Human Rights Commission convened a mediation involving the parties to these proceedings but unfortunately the complaint was not resolved.

[2] By subsequent statement of claim filed on 20 July 2015 Ms Bright has complained of indirect discrimination and victimisation, relying on the non-discrimination provisions of the Human Rights Act 1993, particularly ss 22, 65 and 66.

[3] In a statement of reply filed on 17 August 2015 all three defendants deny the allegations.

[4] At a teleconference convened by the Chairperson on 16 November 2015 case management directions were given with a view to the proceedings being heard at Auckland on 25, 26 and 27 July 2016. During the course of the teleconference the attention of Ms Bright was drawn to the need for her to consider amending her proceedings and second, joining the New Zealand Fire Service. The Chairperson also made reference to the Tribunal's power to send the case back to the Human Rights Commission for mediation even though an initial attempt at mediation might have been unsuccessful. See the *Minute* issued on 16 November 2015 at [3] to [5].

[5] By email dated 8 December 2015 Ms Bright requested (inter alia) an extension of the timetable steps agreed to at the teleconference, mentioning that one of her witnesses had just passed away. She also advised she was considering asking that her case be referred back to the Human Rights Commission.

[6] By email dated 18 January 2016 Ms Bright made a formal request that her proceedings be referred for mediation.

[7] It took some time for Mr Dagger to respond to this request, apparently because one or other of the three defendants has been in ill health or otherwise unavailable. However, by email dated 22 June 2016 Mr Dagger has now advised all three defendants have confirmed their consent to the matter being referred back to the Human Rights Commission.

Discussion

[8] Section 92D of the Act relevantly provides:

92D Tribunal may refer complaint back to Commission, or adjourn proceedings to seek resolution by settlement

- (1) When proceedings under section 92B are brought, the Tribunal—
 - (a) must (whether through a member or officer) first consider whether an attempt has been made to resolve the complaint (whether through mediation or otherwise); and
 - (b) must refer the complaint under section 76(2)(a) to which the proceedings relate back to the Commission unless the Tribunal is satisfied that attempts at resolution, or further attempts at resolution, of the complaint by the parties and the Commission—
 - (i) will not contribute constructively to resolving the complaint; or
 - (ii) will not, in the circumstances, be in the public interest; or
 - (iii) will undermine the urgent or interim nature of the proceedings.
- (2) The Tribunal may, at any time before, during, or after the hearing of proceedings, refer a complaint under section 76(2)(a) back to the Commission if it appears to the Tribunal, from what is known to it about the complaint, that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation).
- (3) The Tribunal may, instead of exercising the power conferred by subsection (2), adjourn any proceedings relating to a complaint under section 76(2)(a) for a specified period if it

appears to the Tribunal, from what is known about the complaint, that the complaint may yet be able to be resolved by the parties.

[9] Although the parties unsuccessfully attempted mediation on 24 January 2013 it has become evident they now have a better understanding of the challenges faced in litigating the issues before the Tribunal.

[10] As Ms Bright has asked that her complaint be referred back to the Human Rights Commission and as all three defendants have confirmed their consent, the requirements of s 92D(2) are satisfied. That is, it appears to the Tribunal from what is known to it about the complaint that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation).

Conclusion

[11] We accordingly conclude the statutory criteria in s 92D(2) have been satisfied and that the complaint is to be referred back to the Commission. There is a clear interest in Ms Bright and the three defendants seeking to resolve their differences informally before engaging the Tribunal's adversarial litigation process.

ORDERS

[12] For the reasons given the following orders are made:

[12.1] Pursuant to s 92D(2) of the Human Rights Act 1993 the complaint by Ms Bright is referred back to the Human Rights Commission for resolution by the parties and the Commission (whether through mediation or otherwise).

[12.2] So the proceedings are not left in suspension indefinitely, the parties are to provide the Tribunal with a progress report in six months time. Such report must be filed no later than 5pm on Friday 16 December 2016.

[12.3] The proceedings before the Tribunal are stayed in the interim with leave reserved to all parties to seek further directions if and when the need arises.

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Mr RPG Haines QC
Chairperson

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Dr SJ Hickey MNZM
Member

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Mr BK Neeson JP
Member