

Reference No. HRRT 017/2019

UNDER HUMAN RIGHTS ACT 1993

BETWEEN MARCUS JAMES STEELE

PLAINTIFF

AND MSC 2018 LIMITED

DEFENDANT

AT WELLINGTON

BEFORE:
Mr RPG Haines ONZM QC, Chairperson

REPRESENTATION:
Mr MJ Steele in person

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 13 May 2019

**DECISION OF CHAIRPERSON REFERRING COMPLAINT BACK
TO HUMAN RIGHTS COMMISSION¹**

Introduction

[1] By statement of claim filed on 13 May 2019 Mr Steele alleges he has been sexually harassed by employees of MSC 2018 Limited.

[2] Attached to the statement of claim is a memorandum dated 11 May 2019 in which Mr Steele says the Human Rights Commission “has been notified and a request made for mediation”. In a second memorandum (dated 12 May 2019) Mr Steele requests an order from the Tribunal “for mediation to occur by Teleconference”.

¹ [This decision is to be cited as *Steele v MSC 2018 Ltd (Referral back to Human Rights Commission)* [2019] NZHRRT 25.]

Discussion

[3] The scheme of the Human Rights Act 1993 is that a complaint must in the first instance be made to the Human Rights Commission so that the parties have opportunity to resolve the complaint by mediation. The purpose of s 92D is to ensure plaintiffs do not file proceedings in the Tribunal until after the mediation process has been completed.

[4] Section 92D(1) of the Human Rights Act requires that when proceedings are brought, the Tribunal or Chairperson must first consider whether an attempt has been made to resolve the complaint. An order referring the complaint back to the Human Rights Commission is required to be made unless the Tribunal or Chairperson is satisfied that attempts at resolution of the complaint by the parties and the Commission will not contribute constructively to resolving the complaint or will not, in the circumstances, be in the public interest.

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

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

- (1) When proceedings under section 92B are brought, the Tribunal or the Chairperson or a Deputy Chairperson—
 - (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 or the Chairperson or a Deputy Chairperson 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 or the Chairperson or a Deputy Chairperson 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 or the Chairperson or a Deputy Chairperson, 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 or the Chairperson or a Deputy Chairperson 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 or the Chairperson or a Deputy Chairperson, from what is known about the complaint, that the complaint may yet be able to be resolved by the parties.

[6] As Mr Steele has advised the Tribunal that the Human Rights Commission has been notified of his complaint and that a request has been made for mediation it must be concluded the statutory criteria in s 92D(1)(a) have been satisfied and that there is no impediment under subs (1)(b) to the making of an order referring the complaint back to the Commission as it appears from what is known about the complaint that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation).

[7] Mr Steele has requested an order from the Tribunal for mediation to occur by teleconference. However, the Tribunal has no jurisdiction to make such an order. It is for the Human Rights Commission to determine how the mediation process is to be conducted.

Conclusion

[8] The statutory criteria in s 92D(1) having been satisfied, Mr Steele's complaint is to be referred back to the Human Rights Commission.

ORDERS

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

[9.1] Pursuant to s 92D(1) of the Human Rights Act 1993 the complaint by Mr Steele is referred to the Human Rights Commission.

[9.2] The Secretary is directed to provide a copy of this decision to the Commission, Mr Steele and to MSC 2018 Limited.

[9.3] The proceedings before the Tribunal are stayed with leave reserved to either party to seek further directions if the need arises.

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Mr RPG Haines ONZM QC
Chairperson