

UNDER REFERENCE NO. HRRT 037/2016
BETWEEN THE HUMAN RIGHTS ACT 1993
AND MATTHEW RICHARD BROWN
PLAINTIFF
NEW ZEALAND POST LIMITED
DEFENDANT

AT WELLINGTON

BEFORE:

Ms J Foster, Deputy Chairperson
Ms NJ Baird, Member
Ms SP Stewart, Member

REPRESENTATION:

Mr Brown in person
Mr OE Jaques for defendant

DATE OF HEARING: On the papers

DATE OF DECISION: 23 April 2024

DECISION OF TRIBUNAL STRIKING OUT CLAIM¹

[1] Mr Brown's claim alleges that New Zealand Post Ltd (NZ Post) subjected him to discrimination and victimisation in breach of various provisions of the Human Rights Act 1993 (HRA). The claim, however, fails to identify the facts and circumstances on which Mr Brown relies to support his allegations of breaches of the HRA and the Tribunal ordered

¹ This decision is to be cited as *Brown v New Zealand Post Ltd (Strike Out)* [2024] NZHRRT 21.

Mr Brown to file an amended statement of claim that provides sufficient particulars to enable NZ Post to be fairly informed of the case to be met.²

[2] Mr Brown has not filed an amended claim and is in default of the Tribunal's order.

[3] NZ Post has applied to strike out the claim on the basis that the claim:

[3.1] Is an abuse of process as Mr Brown has refused to comply with the Tribunal's order that he properly particularise his claim; and/or

[3.2] Is likely to cause prejudice and delay as it fails to provide adequate particulars and does not give the defendant or the Tribunal adequate notice of what the claim is; and/or

[3.3] Discloses no reasonable cause of action.

[4] The Tribunal must therefore determine whether this claim should be struck out because it is either an abuse of process, is likely to cause prejudice and delay, or discloses no reasonable cause of action.

THE LAW

[5] The Tribunal's power to strike out proceedings, is found in s 115A of the HRA. The Tribunal under s 115A has a discretionary power to strike out a proceeding, including on the basis that it discloses no reasonable cause of action, is likely to cause prejudice or delay, or is otherwise an abuse of process.³

[6] The principles to be applied by the Tribunal in its strike out jurisdiction are consistent with the approach taken by the High Court under r 15.1 and the well-established principles adopted by the senior courts.⁴

[7] Those principles relevantly include that it is inappropriate to strike out a claim on the basis it does not disclose a reasonably arguable cause of action unless the Tribunal can be certain it cannot succeed.⁵ Given the fundamental constitutional importance of the right of access to courts and tribunals, the jurisdiction to strike out a claim is one to be used sparingly, and particular care is required where the law is confused or developing.⁶

² The Tribunal's order was made in *Brown v NZ Post Ltd (Recusal Application)* [2016] NZHRRT 37 at [57]. The application by NZ Post for particulars and the tribunal's reasons for granting the order are discussed at [38]-[56].

³ Section 115A was inserted into the HRA on 14 November 2018 (by s 93 of the Tribunals Powers and Procedures Legislation Act 2018). Prior to this amendment the Tribunals power to strike out proceedings was found in s 115, that also gave the Tribunal a wide discretionary power to strike-out proceedings in situations not dissimilar to those contemplated by r 15.1 of the High Court Rules 2016, see *Mackrell v Universal College of Learning* HC Palmerston North CIV 2205-485-802, 17 August 2005 at [48]. Accordingly, the principles the Tribunal applied under s 115 are the same as those applied under s 115A.

⁴ *Attorney-General v Prince* [1998] 1 NZLR 262 (CA) endorsed by the Supreme Court in *Couch v Attorney-General* [2008] NZSC 45, [2008] 3 NZLR 725 at [33] per Elias CJ and Anderson J.

⁵ *Couch*, above n 5, at [33] per Elias CJ and Anderson J.

⁶ *Prince* above n 5, at 267; and *Couch* above n 5, at [33].

Nevertheless, the cautious approach to striking out a claim needs to be balanced against the desirability of freeing defendants from the burden of litigation which is groundless or is an abuse of process.⁷

[8] The Tribunal may strike out a statement of claim if it is likely to cause prejudice or delay, including if the statement of claim is unintelligible or prolix.⁸ A statement of claim must be accurate, clear and intelligible, and must provide sufficient particulars to enable the defendant to be fairly informed of the case to be met. Due allowance may be made for lay litigants, but they are not permitted to file incomprehensive claims if that causes prejudice and injustice to the defendant and significant inconvenience for the Tribunal.⁹

[9] The jurisdiction to strike out a proceeding as an abuse of process includes where there has been a consistent failure to comply with Tribunal orders where the failure is deliberate. It is recognised that failures even repeated ones, especially when the plaintiff is a lay litigant, will not always be deliberate but may result from ignorance, disorganisation, or anxiety. Consistent failure in the face of repeated warnings will be regarded as deliberate, particularly if the plaintiff is conscious of the breach and chooses to do nothing.¹⁰ Finding that there has been an abuse of process on this basis does not require the defendant to show any prejudice from the plaintiff's failure.¹¹

[10] The exercise of jurisdiction to strike out a claim requires the Tribunal to be satisfied both that there is a proper basis on which to strike out the claim, and, that the Tribunal should exercise its discretion to strike out this claim.

[11] Section 105 is potentially relevant to the Tribunal's consideration to the strike out application. That section requires the Tribunal to act in accordance with the substantial merits of the case without regard to technicalities, but in accordance with the principles of natural justice and in a manner that is fair and reasonable and according to equity and good conscience. While recognising the need for the Tribunal to be accessible to lay-people and self-represented litigants, the Courts have again held that this must be balanced against the need to free defendants from litigation that amounts to an abuse of process.¹²

[12] NZ Post's strike out application is being heard on the papers pursuant to s 104(4A) of the HRA. Mr Brown objects to the application being dealt with in this manner without an oral hearing. The Tribunal, however, considers that the application can be fairly

⁷ *Parohinog v Yellow Pages Group Ltd* [2015] NZHRRT 14 at [22]-[28].

⁸ *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53, [2013] 2 NZLR 679.

⁹ *MacKrell* above n 4, at [57]-[59].

¹⁰ See *Gwizo v Attorney-General* [2022] NZHC 2717 at [44] citing *Yarrow v Finnegan* [2017] NZHC 17155 at [11]-[14] and [16], and the authorities there cited.

¹¹ See *Gwizo*, above n 11, at [46] and the authorities there cited.

¹² See *Greer v Commissioner of Police* [2024] NZHC 104 at [29]-[30] and cases referenced within.

determined on the papers as there is no need for the parties to give oral evidence for the present issues to be determined.

THE ISSUES

[13] The issues arising for determination are accordingly:

[13.1] Whether Mr Brown's failure to comply with the Tribunal's direction is an abuse of process.

[13.2] Whether Mr Brown's claim is likely to cause prejudice or delay.

[13.3] Whether Mr Brown's claim discloses no reasonably arguable cause of action.

[13.4] If the answer to any of the above is yes, whether the Tribunal should strike out the claim.

[14] Before considering each of these issues it is helpful to set out the background.

BACKGROUND

[15] Mr Brown's claim was filed on 11 July 2016. The provisions of the HRA that NZ Post was alleged to have contravened were stated as follows: "Part 2; Unlawful Discrimination 21(a)(i); 44 Provisions of Goods and Services (1)(a)(6); 65 Indirection Discrimination; and 66 Victimisation (1)(a)(i)". The statement of claim did not set out any facts but stated "I have attached (enclosed) all relative documents and an affirmation, dated 4 May 2015".

[16] On 8 August 2016, NZ Post filed a statement of reply denying the claim and a memorandum regarding the failure of Mr Brown to provide sufficient particulars for NZ Post to have fair notice of the claim.

[17] By *Minute* dated 11 November 2016, following the teleconference on that date, the parties were directed to file submissions on the application for particulars if they wished. At the teleconference Mr Brown said his claim is "clear enough" and described NZ Post's application for particulars as "rubbish". Mr Brown chose not to file any submissions.

[18] In a decision dated 1 December 2016 the Tribunal granted NZ Post's request for particulars and ordered Mr Brown to file by 16 December 2016 an amended statement of claim that provided sufficient particulars to enable NZ Post to be fairly informed of the case to be met.¹³

¹³ See *Brown v NZ Post Ltd (Recusal Application)*, above n 2. The decision dealt with NZ Post's request for particulars and a recusal application by Mr Brown in respect of the then Chairperson. The application for particulars is discussed at [38] - [57].

[19] In the decision the Tribunal made clear to Mr Brown the basis on which the order was made and the importance of this if his claim was to progress.

[20] The Tribunal found as follows:

[53] In the present case the statement of claim is bereft of meaningful content with the result the Tribunal and NZ Post are left to search through the attached documents for clues as to what Mr Brown's case is. This is unacceptable as is Mr Brown's unreasoned refusal to provide particulars or to make submissions on the NZ Post application. It was particularly unhelpful for him to characterise the application as "rubbish". As pointed out in *Mackrell v Universal College of Learning* at [58] and [59], parties should not have to make sense of the incomprehensible. Lay litigants are not to be permitted to file unintelligible claims because that only visits prejudice and injustice upon the opposing party, not to mention the enormous inconvenience to the court or tribunal. In *Waterhouse v Contractors Bonding Ltd* [2013] NZSC 89, [2014] 1 NZLR 91 at [30] to [32] it was accepted abuse of process extends to proceedings which are seriously and unfairly burdensome, prejudicial or damaging or productive of serious and unjustified trouble and harassment.

[21] The Tribunal also noted in the decision that unless an amended statement of claim was filed as ordered, Mr Brown was likely to face an application by NZ Post that these proceedings be struck out.¹⁴

[22] Mr Brown appealed the decision to the High Court, but this was struck out on 21 October 2017.¹⁵ Mr Brown was subsequently declined leave to appeal to the Court of Appeal.¹⁶

[23] Mr Brown has not filed an amended statement of claim and remains in default of the Tribunal's order.

[24] On 5 March 2018 NZ Post applied to strike out Mr Brown's claim on the bases above at [3], as being an abuse of process, likely to cause prejudice and delay, and/or disclosing no reasonable cause of action.

[25] On 6 March 2018 Mr Brown filed a memorandum opposing the strike out and he has subsequently filed numerous other documents in respect of this matter.¹⁷ It is clear from these documents that Mr Brown opposes his claim being struck out and that he does not agree with the Tribunal's order requiring him to file an amended claim. The documents do not otherwise address any relevant matters of substance regarding to whether his claim should be struck out.¹⁸

¹⁴ At [56].

¹⁵ See *Brown v New Zealand Post Ltd* [2017] NZHC 2670.

¹⁶ See *Brown v New Zealand Post Ltd* [2018] NZHC 2994.

¹⁷ As Mr Brown had appealed to the senior courts from the decision of the Tribunal declining his application for the Chairperson (Mr RPG Haines QC) to recuse himself from hearing any of his proceedings the Tribunal did not progress any of his proceedings. In 2020 Mr Brown was provided a further opportunity to file any opposition to the strike-out before it was determined, and he filed numerous documents that reference this matter.

¹⁸ Instead, the documents focus on irrelevant matters, including unsubstantiated allegations and complaints concerning persons who are not parties to these proceedings (some of which related to past Tribunal proceedings),

WHETHER MR BROWN'S ONGOING FAILURE TO COMPLY WITH TRIBUNAL'S ORDER IS AN ABUSE OF PROCESS

[26] A deliberate ongoing failure to comply with Tribunal directions amounts to an abuse of process as discussed above at [9].

[27] In the decision dated 1 December 2016 the Tribunal ordered Mr Brown to file an amended statement of claim by 16 December 2016.¹⁹

[28] Mr Brown was aware from that decision of the importance of the order and that his claim may be struck out if he failed to comply.

[29] Mr Brown has however, made no attempt to comply with the order. That is despite him having ample opportunity to do so both in the fifteen months prior to NZ Post's strike out application being filed and in the years since the making of that application.

[30] Instead of taking the opportunity to file an amended statement of claim and avoid his claim being struck out, Mr Brown filed numerous irrelevant submission documents in respect of the strike out.

[31] Mr Brown has not sought to provide any excuse for not complying the Tribunal's order. Rather, it is apparent from the various documents filed by Mr Brown that he does not agree with the Tribunal's order requiring him to file an amended claim.

[32] Nor can Mr Brown's non-compliance be attributed to ignorance or disorganisation. He knew and understood why the direction required him to file an amended statement of claim was necessary. He understood what the direction required him to do and was aware of the consequences of him not complying.

[33] It is apparent from the above that Mr Brown could have complied with the Tribunal's order if he had chosen to do so. Mr Brown, however, chose not to comply despite being aware of the consequences of not doing so. In these circumstances the Tribunal is satisfied that Mr Brown's non-compliance with the Tribunal's order is deliberate.

[34] The Tribunal finds that these proceedings have become an abuse of process.

WHETHER CLAIM IS LIKELY TO CAUSE PREJUDICE OR DELAY

[35] The Tribunal ordered Mr Brown to file an amended statement of claim because his claim is unintelligible. It does not give NZ Post or the Tribunal adequate notice of its particulars and is therefore prejudicial to NZ Post (see above at [8] and [18]-[20]).

improper and unsubstantiated assertions of criminal conduct by NZ Post, the Tribunal and various other persons, and repetition of requests for disclosure that have previously been declined by the Tribunal.

¹⁹ *Brown v NZ Post Ltd (Recusal Application)* above n 2 at [57].

[36] The Tribunal has already made findings that prejudice arises to NZ Post because Mr Brown's claim is unintelligible, has no meaningful content and requires NZ Post to search through various attached material to attempt to ascertain potential claims.

[37] Mr Brown's claim leaves NZ Post in an untenable position as it faces a total absence of pleaded material facts. The Tribunal accepts NZ Post's submission that prejudice arises from this: there is no certainty the claim is limited to information contained in those documents and it is nearly impossible for them to identify relevant documents or brief witnesses.

[38] The Tribunal is for these reasons well satisfied that Mr Brown's claim is likely to cause prejudice and delay to NZ Post.

WHETHER THE CLAIM DISCLOSES A REASONABLY ARGUABLE CAUSE OF ACTION

[39] The determination of whether a claim discloses a reasonably arguable cause of action generally involves an analysis of the statement of claim against the legal elements of the cause of action. If the facts set out in the claim are incapable of making out the cause of action the claim cannot succeed, and therefore does not disclose a reasonably arguable cause of action. Conversely, if the pleaded facts in the claim, if proven, are capable of establishing a cause of action, the claim discloses a reasonably arguable cause of action.

[40] Mr Brown's claim can be taken as alleging three causes of action: discrimination in provision of goods and services in breach of s 44 of the HRA; indirect discrimination in breach of s 65 of the HRA; and victimisation in breach of s 66 of the HRA.

[41] It is not, however, clear which prohibitive ground of discrimination Mr Brown appears to rely on. While Mr Brown's claim appears to allege sex and age discrimination, no facts are pleaded in support of the allegations of discrimination or victimisation.

[42] The claim contains only bare allegations of the HRA breaches (as noted above at [15]) and does not provide any actual factual basis in support of these alleged breaches. Instead, the claim impermissibly refers to numerous attached documents that Mr Brown seeks to rely on without any connection being drawn to the alleged HRA breaches and the contents of the documents (as noted above at [15]).

[43] As there are no pleaded facts supporting the alleged HRA breaches, there is no objective factual basis for the allegations. Consequently, the claim is fundamentally unintelligible, and none of the three causes of action can be established.

[44] As there are insufficient facts in Mr Brown's statement of claim to establish any of the three possible causes of action arising in the claim (discrimination in breach of s 44,

indirect discrimination in breach of s 65 and victimisation in breach of s 66) it cannot succeed.

[45] For those reasons the Tribunal finds that Mr Brown's claim does not disclose a reasonably arguable cause of action.

SHOULD THE TRIBUNAL SHOULD STRIKE OUT THE CLAIM?

[46] The Tribunal has found that Mr Brown's claim:

[46.1] Is an abuse of process; and

[46.2] Is likely to cause prejudice and delay; and

[46.3] Discloses no reasonably arguable cause of action.

[47] It would be inappropriate to allow this claim to progress when it has no prospects of success, is likely to cause prejudice and delay, and has been found to amount to an abuse of process because of Mr Brown's failure to comply with a Tribunal order. Mr Brown could have amended his claim to cure the deficiencies in the claim and avoid it being struck out, but he chose not to.

[48] NZ Post should not be put to any further cost of defending this matter, nor should any further Tribunal resources be expended on this matter.

[49] In light of those factors, the Tribunal considers it wholly appropriate to exercise its discretion to strike out the claim.

COSTS

[50] NZ Post have been successful in their application to strike out this claim. Having regard to the Tribunal's general approach to costs,²⁰ we consider costs should lie where they fall.

ORDER

[51] Mr Brown's claim against New Zealand Post Limited is struck out in its entirety.

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Ms J Foster
Deputy Chairperson

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Ms NJ Baird
Member

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Ms SP Stewart
Member

²⁰ *Beauchamp v B & T Co (2011) Ltd (Costs)* [2022] NZHRRT 30.

