

**IN THE EMPLOYMENT COURT
AUCKLAND REGISTRY**

**[2014] NZEmpC 87
ARC 56/13**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER	of an application for leave to amend statement of claim
BETWEEN	SHIRLEY ANNE MACDONALD Plaintiff
AND	WHALE PUMPS LIMITED T/A DENBY CATERERS Defendant

Hearing:	On the memoranda, affidavits and submissions of the parties filed on 8 and 24 April and 20, 26 and 29 May 2014
Appearances:	C Eckard, counsel for plaintiff C Rowe, advocate for defendant
Judgment:	9 June 2014

INTERLOCUTORY JUDGMENT OF JUDGE M E PERKINS

[1] This matter involves a challenge to a determination of the Employment Relations Authority dated 14 June 2013.¹ The plaintiff was largely unsuccessful in her proceedings in the Authority. There was a subsequent determination on costs dated 28 August 2013² in which the plaintiff was ordered to pay a contribution towards the defendant's costs totalling \$2,000. It is unclear whether there is to be a challenge to that determination.

[2] The substantive challenge has been set down for a hearing. Unfortunately a fixture allocated in May 2014 could not proceed and a new hearing date is now to be allocated.

¹ [2013] NZERA Auckland 252.

² [2013] NZERA Auckland 387.

[3] In reviewing her claim the plaintiff now wishes to file an amended statement of claim. An application for leave to file such an amended statement of claim has been filed. The application is opposed by the defendant.

[4] The amended pleadings proposed relate only to the quantum of the remedies sought. Apart from these proposed amendments, which involve a reduction in the total claims against the defendant, no other amendments are contemplated. It has been agreed between the parties that this application may be dealt with by the Court by considering the papers, which have been filed. These consist of the application, the notice of opposition and memoranda of the representatives setting out submissions. Affidavits have been filed by the parties simply confirming the factual assertions contained in the representatives' memoranda.

[5] The defendant opposes the proposed amendment primarily on the grounds that if the amendment is granted, this will in some way affect the hearing of the matter being able to proceed as a de novo hearing. Ms Rowe, in her submissions, maintains that if the amendment is granted, the plaintiff would need to proceed with the matter by way of a non-de novo hearing. Secondly, Ms Rowe contends that if the amendment is granted, the defendant will be substantially prejudiced in its ability to cross-examine the plaintiff on matters going to her credibility. It appears that the defendant wishes to rely upon assertions made by the plaintiff during the course of the Authority's investigation, which now, apparently, are to be resiled from.

[6] Having considered the submissions carefully, it is clear that Ms Rowe is under a misapprehension as to the effect of the amendment if it is granted.

[7] The amendments proposed to the statement of claim will not affect the election to have this matter proceed on a de novo basis. Any hearing of the matter will proceed on that basis regardless of the amendments. Secondly, the reduction to remedies as proposed will have no effect whatsoever on the ambit of cross-examination of the plaintiff. If, as a result of the amendment, there are relevant matters going to Ms MacDonald's credibility, then Ms Rowe will clearly be entitled to put those matters to Ms MacDonald during the course of her evidence.

[8] A reduction in the quantum of remedies sought against the defendant as in the proposed amended statement of claim can hardly be alleged as prejudicial. Indeed it must be very much to the advantage of the defendant to have the remedies sought against it reduced.

[9] Ms Rowe, in her submissions, also refers to matters relating to costs. These are matters which will be more appropriately dealt with during the course of the hearing, and when costs ultimately come to be considered once the merits of the respective cases have been decided upon.

[10] In a situation where the plaintiff, prior to hearing, has reviewed the quantum of the claim and is prepared to reduce it, an amendment to the statement of claim should be allowed. This is not a situation where the plaintiff is seeking to introduce a new cause of action or any other substantive amendment, which would seriously prejudice the defendant in preparation for the hearing. The consequences, which Ms Rowe alleges will occur if the amendment is granted, are not correct.

[11] The plaintiff is, accordingly, granted leave to file an amended statement of claim with the amendment limited to the extent set out in para 24 of Mr Eckard's memorandum of submissions dated 13 May 2014. Such amended statement of claim should be filed and served within 14 days. In view of the fact that the allegations contained in the previous statement of claim will not be altered it is unlikely that the defendant will need to file any statement of defence to the amended statement of claim. However, if the defendant chooses to do so then it will have 14 days to file such statement of defence following service upon it of the amended statement of claim.

[12] In order to advance this matter, the representatives of the parties should confer with the Registrar as to the allocation of a new hearing date.

M E Perkins
Judge

Judgment signed at 1 pm on 9 June 2014