

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2023] NZEmpC 149
EMPC 4/2023**

IN THE MATTER OF a challenge to a determination of the
 Employment Relations Authority

AND IN THE MATTER OF an application for stay of proceedings

BETWEEN ADIN NASAR
 Plaintiff

AND EXPERT IT GROUP LIMITED
 First Defendant

AND ZABIULLAH SHARIF
 Second Defendant

Hearing: On the papers

Appearances: A Nasar, plaintiff
 No appearance for the first or second defendant

Judgment: 6 September 2023

**INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN
(Service on second defendant)**

[1] Mr Nasar took proceedings in the Employment Relations Authority (the Authority) claiming that he was employed by the first defendant, Expert IT Group Ltd (Expert IT), from Wednesday, 25 November 2020 until Thursday, 3 December 2020. He sought wages and holiday pay for that period and claimed he was unjustifiably dismissed, for which he sought further remedies. He also sought leave for Mr Sharif, the second defendant, to be joined to the proceedings as a person involved.

[2] Mr Nasar was unsuccessful in the Authority. The Authority found that he was a volunteer and not an employee of Expert IT. The Authority made no finding in respect of whether Mr Sharif ought to be joined to the proceeding.¹

[3] Mr Nasar has challenged the Authority's determination on a de novo basis.

[4] Mr Nasar was able to serve Expert IT on 16 January 2023 but was not able to serve Mr Sharif. Expert IT has not filed a statement of defence.

[5] An affidavit has now been filed by a process server who advises that he served the documents on Expert IT at its registered office on Wednesday, 2 August 2023, delivering the documents to a person who identified themselves as the office manager of Expert IT.

[6] Mr Sharif was not present at that time. The process server advises he made contact with him but that he was evasive when asked when he would meet with the process server. The process server says he returned to the office on 16 August 2023 at 5.01 pm and met with an employee who advised that Mr Sharif was in and out of the office. The process server called the office manager on 17 August 2023 at 3.24 pm. He says she confirmed that Mr Sharif had received the original documents left on the process server's first visit to Expert IT's registered office and that he discussed the matter with her the following day.

[7] The process server deposes that he considers that both Expert IT and Mr Sharif have been served. Notwithstanding the process server's assessment, it is clear that Mr Sharif has not been personally served with the Court proceedings.

[8] Nevertheless, by virtue of reg 6 of the Employment Court Regulations 2000 and r 6.8 of the High Court Rules 2016, the Employment Court may make directions for substituted service. Rule 6.8(1)(b) of the High Court Rules provides that:

6.8 Substituted service

- (1) If reasonable efforts have been made to serve a document by a method permitted or required under these rules, and either the document has

¹ *Nasar v Expert IT Group Ltd* [2022] NZERA 643 (Member Urlich).

come to the knowledge of the person to be served or it cannot be promptly served, the court may—

...

- (b) when steps have been taken for the purpose of bringing, or which have a tendency to bring, the document to the notice of the person on whom it is required to be served, direct that the document be treated as served on that person on a specified date:

...

[9] I consider such an order is appropriate here. Although some of the material in the process server's affidavit is hearsay, he gives direct evidence of engaging with Mr Sharif. I am satisfied that Mr Sharif is aware of the proceedings.

[10] In those circumstances, I direct that the proceedings are treated as served on Mr Sharif on 16 August 2023.

[11] I allow Mr Sharif until 4 pm on Monday 2 October 2023 to file and serve a statement of defence.

[12] Mr Nasar is to immediately courier a copy of this judgment to Mr Sharif, at the address for Expert IT, and provide confirmation to the Registrar that this has been done.

[13] I note that, if Expert IT wishes to file a statement of defence, it now will have to apply for leave to do so.

[14] Costs are reserved.

J C Holden
Judge

Judgment signed at 3.15 pm on 6 September 2023