



TRIPLE JEOPARDY

When a pharmacist lodged claims with the Employment Relations Authority, the High Court and the Human Rights Review Tribunal, his former employer complained the costs and resources involved in defending three separate proceedings would be burdensome. Paul Robertson looks at the outcome.

A DISGRUNTLED EMPLOYEE

can lodge a claim with the Employment Relations Authority, the District/High Court and the Human Rights Review Tribunal (the HRRT) depending upon the nature of their concerns. What can an employer do in that situation? Recent decisions involving a pharmacist illustrate the problem.

THE BACKGROUND

Mr Cooper was employed by a pharmacy until allegations of misconduct were made. It was also alleged that he acted unprofessionally and unethically in his practice as a pharmacist. After negotiating a settlement, Mr Cooper resigned.

He subsequently complained that his former employers told other pharmacies of their concerns about him, and that the record of settlement was sent to the Pharmacy Council, which instigated an investigation and placed conditions on his practising certificate.

Mr Cooper lodged a statement of problem with the Authority on the basis that his former employers had breached the

terms of the record of settlement by disclosing the terms of settlement to third parties. Mr Cooper applied for name suppression which was eventually granted. He also issued proceedings in the High Court alleging defamation.

In relation to his privacy concerns, Mr Cooper instigated proceedings before the HRRT. The defendants to the HRRT proceedings applied to have the proceedings struck out as an abuse of process and vexatious because of the other proceedings underway. In its decision of 2 October 2017, the HRRT considered that application.

CAN YOU RUN THREE SEPARATE PROCEEDINGS?

Mr Cooper's former employers complained that the same issues had been put before three different courts/tribunals, and that charges being heard by the Health Practitioners Disciplinary Tribunal would also cover the same ground. For this reason there was a strong risk that the courts and tribunals would reach different decisions on the facts.

The legal resources, and legal costs involved in defending three separate proceedings would also be unnecessarily burdensome.

The HRRT decided that the HRRT proceedings were not an abuse of process. Each claim reflected the "unique and specific jurisdictions" of the respective courts and tribunals.

The High Court, for instance, would focus on the comments alleged to be defamatory of Mr Cooper while the HRRT would hear his privacy concerns about the disclosure of his personal information to third parties.

The HRRT said that because there was no one forum Mr Cooper could go to have all these claims resolved in one consolidated set of proceedings, there could be no complaint about him having issued separate proceedings.

NAME SUPPRESSION

The defendants did have one 'win'. In a decision from 8 September 2007, the HRRT declined name suppression. This was because of delay by Mr Cooper. After obtaining name suppression

in the Employment Court, he had not progressed that proceeding for some time; he had waited 12 months before lodging his claim in the HRRT. Name suppression was also unwarranted for public policy reasons.

The HRRT referred to a direction of the Pharmacy Council that requires him to notify potential employers that he is under investigation.

THE LESSON IS?

These decisions confirm the practical difficulties in resolving employment disputes. While courts/tribunals will normally take care not to 'over compensate' claimants, it is very difficult to close down a proceeding because of the perceived risk of double or even triple jeopardy.



Cooper v Hamilton Pharmacy 2011 Limited [2017] NZ HRRT 34
Cooper v Hamilton Pharmacy 2011 Limited [2017] NZ HRRT 38

PAUL ROBERTSON is a partner at Heaney & Partners in Auckland. Visit: www.heaneypartners.com

HEANEY & PARTNERS
BARRISTERS & SOLICITORS

QUALITY OUTCOMES
to School Trustee Liability & Employment Disputes

PAUL ROBERTSON | Partner: direct dial: (09) 367 7004 email: paul.robertson@heaneypartners.com www.heaneypartners.com
Phone: (09) 3030 100 Fax: (09) 3677 009 Level 13, PwC Tower, 188 Quay Street, Auckland PO BOX 105391, Auckland. 1043. DXCP18503