

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

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2023] NZEmpC 26
EMPC 85/2022**

IN THE MATTER OF a declaration under s 6(5) of the
Employment Relations Act 2000

AND IN THE MATTER OF an application for leave to recall a
witness

BETWEEN SERENITY PILGRIM, ANNA
COURAGE, ROSE STANDTRUE,
CYSTAL LOYAL, PEARL VALOR
AND VIRGINIA COURAGE
Plaintiffs

AND THE ATTORNEY-GENERAL SUED
ON BEHALF OF THE MINISTRY OF
BUSINESS, INNOVATION AND
EMPLOYMENT, LABOUR
INSPECTORATE
First Defendant

AND HOWARD TEMPLE, SAMUEL
VALOR, FAITHFUL PILGRIM, NOAH
HOPEFUL AND STEPHEN
STANDFAST
Second Defendants

Hearing: On the papers

Appearances: BP Henry, D Gates and S Patterson, counsel for plaintiffs
J Catran, K Sagaga and A Piaggi, counsel for first defendant
S Valor, S Standfast and P Righteous, representatives for second
defendants
R Kirkness, counsel to assist the Court

Judgment: 25 February 2023

**INTERLOCUTORY JUDGMENT (NO 29)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application for leave to recall a witness)**

[1] The first defendant has applied for leave to cross-examine a witness (Mrs Benjamin) for the Gloriavale defendants, who gave evidence on 23 February 2023. I treat the application as an application for recall. The plaintiffs do not oppose the application. The Gloriavale defendants have filed a memorandum at short notice. They have raised issues in respect of the reasons why the application has been advanced, but are otherwise prepared to abide the decision of the Court.

[2] The Court may order the recall of a witness who has already given evidence where it is in the interests of justice to do so.¹

[3] The decision is necessarily a pragmatic one, dependent on the circumstances of the particular case.² The importance of the evidence is a relevant factor.³ Also relevant is whether it emerged in a way that was not anticipated and the significance of the potential lines of cross-examination.⁴ Against this the Court should take into account the general impact of requiring a witness to be recalled, such as delay to the proceedings.⁵

[4] I accept that counsel may not have been expecting the evidence to be given. It emerged in answer to a question put to the witness in evidence in chief. However, I agree with Mr Valor, for the Gloriavale defendants, that it is unclear why cross-examination on the evidence could not have proceeded at the time. Briefs of evidence for all witnesses were filed some considerable time ago, including for the witness (who has yet to give evidence) whose evidence is said to be inconsistent with Mrs Benjamin's.

¹ See, by way of useful analogy in this Court, Evidence Act 2006, s 99.

² *Woodhouse v New Zealand Police* HC Rotorua CRI-2010-463-71, 13 April 2011 at [42].

³ *R v T* HC Christchurch CRI-2007-009-6270, 9 April 2008.

⁴ *Stevens v R* [2020] NZHC 3290 at [45].

⁵ *Young v Tower Insurance Ltd* [2016] NZHC 2176 at [13].

[5] There has been minimal delay in the application being advanced; the scope of the intended cross-examination is narrow; recall of the witness can be accommodated on Monday 27 February 2023; and inconvenience to the witness can be minimised by her giving evidence via AVL.

[6] In the circumstances, I am prepared to grant the application. Mrs Benjamin is to be recalled for the purposes of cross-examination on the limited basis set out in counsel for the Attorney-General's application. She will give her evidence via AVL on Monday 27 February 2023 at 9.30 am.

[7] Costs are reserved.

Christina Inglis
Chief Judge

Judgment signed at 10.30 am on 25 February 2023