

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

**[2023] NZEmpC 31
EMPC 428/2022**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application to participate at a hearing by alternative means
BETWEEN	PACT GROUP Plaintiff
AND	CAREY ROBINSON Defendant

Hearing: On the papers

Appearances: F McMillan, counsel for plaintiff
R Jamieson, advocate for defendant

Judgment: 1 March 2023

**INTERLOCUTORY JUDGMENT (NO 2)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application to participate at a hearing by alternative means)**

[1] This matter is set down for three days, commencing 20 June 2023. An application has been made by the plaintiff for leave for a witness to participate at the hearing by audio-visual link (AVL). The defendant is not opposed to the order sought. Despite the fact that there is no opposition, the Court must be satisfied that it is appropriate that the orders be made.

[2] The ordinary way for a witness to give evidence in a civil proceeding is orally in a courtroom in the presence of the Judge, the parties and the public.¹ There is no presumption in favour of giving evidence in the ordinary way.²

[3] The Court may allow the use of AVL in civil proceedings, including for the appearance of a party and witnesses. Before doing so, it must take into account whether or not the other party consents to the use of AVL and must have regard to the criteria in s 5 of the Courts (Remote Participation) Act 2010.³ The criteria are:⁴

- (a) the nature of the proceeding;
- (b) the availability and quality of the technology that is to be used;
- (c) the potential impact of the use of the technology on the effective maintenance of the rights of the other parties to the proceeding, including –
 - (i) the ability to assess the credibility of witnesses and the reliability of evidence presented to the Court; and
 - (ii) the level of contact with other participants;
- (d) any other relevant matters.

[4] Counsel for the plaintiff has filed a helpful memorandum fully canvassing the matters relevant to the Court's discretion. In summary, the witness now lives in Australia. Travelling to New Zealand to attend at the hearing would present personal difficulties for her. The defendant does not oppose the application. There is nothing about the nature of the proceedings which suggests that the giving of evidence via AVL would be unsuitable. Appropriate AVL facilities are available. While I have considered the potential impact of AVL on the ability to assess credibility and the

¹ See High Court Rules 2016, r 9.51; and Evidence Act 2006, s 83.

² *Wealleans v R* [2015] NZCA 353 at [34]; *R v O (CA443/12)* [2012] NZCA 475 at [37]; and *R v S* [2008] NZCA 313 at [28].

³ Courts (Remote Participation) Act 2010, s 7.

⁴ Courts (Remote Participation) Act 2010, s 5.

reliability of evidence presented, those considerations do not warrant an in-person appearance in this case.⁵

[5] In the circumstances, the application for leave for the identified witness to appear at the hearing and give evidence by AVL is granted.

[6] Counsel for the plaintiff is to ensure that the agreed bundle of documents is available to the witness when the hearing takes place. Counsel has confirmed that the witness has also been provided with a copy of the Court's Guideline for Appearing by Audio-Visual Link.⁶

[7] I do not understand any issue of costs to arise.

Christina Inglis
Chief Judge

Judgment signed at 11.00 am on 1 March 2023

⁵ *Deutsche Finance New Zealand Ltd v Commissioner of Inland Revenue* (2007) 18 PRNZ 710 (HC) at [37].

⁶ Employment Court "Guideline for Appearing by Audio-Visual Link, Including in Virtual Hearings" (February 2022) <<https://employmentcourt.govt.nz/>>.