

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

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

**[2024] NZEmpC 166  
EMPC 70/2024**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for witness to appear by audio-visual link
BETWEEN	HIGH PERFORMANCE SPORT NEW ZEALAND LIMITED Plaintiff
AND	THE ATHLETES' COOPERATIVE INCORPORATED Defendant

Hearing: On the papers

Appearances: K Dunn, counsel for plaintiff  
A Scott-Howman, counsel for defendant

Judgment: 30 August 2024

---

**INTERLOCUTORY JUDGMENT OF JUDGE KATHRYN BECK  
(Application for witness to appear by audio-visual link)**

---

[1] This proceeding is set down to be heard in Wellington on 10–11 September 2024.

[2] On 29 August 2024, the defendant applied for one of its witnesses, Emma Twigg, to participate in the hearing by audio-visual link (AVL). The grounds for the application are that Ms Twigg is a competitive rower and, on the days of the hearing, will be in Bologna, Italy, as part of an international rowing competition.

[3] The ordinary way for a witness to give evidence in a civil proceeding is orally in a courtroom in the presence of a Judge, the parties and any members of the public who choose to attend.<sup>1</sup>

[4] There is no presumption in favour of giving evidence in the ordinary way.<sup>2</sup>

[5] The Court may allow evidence to be given by AVL in civil proceedings including for the appearances of a party and witness. Before such an order is made, however, the Court must take into account whether or not the other party consents and must have regard to the criteria set out in s 5 of the Courts (Remote Participation) Act 2010.<sup>3</sup> The criteria are:

- (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.

[6] The plaintiff has advised that it consents to the application.

[7] There is nothing about the nature of the proceeding that would suggest that using AVL is unsuitable. Counsel for the defendant has confirmed that Ms Twigg is able to attend by AVL at any time to suit the Court's convenience.<sup>4</sup>

[8] There are no factors that weigh against granting the application.

[9] The application is granted. It is usual for participation by AVL to be accompanied by the satisfactory completion of a test to ensure that the device or devices to be used are adequate for the Court's purposes.<sup>5</sup> Counsel should ensure that this is able to take place.

---

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

<sup>2</sup> *Wealleans v R* [2015] NZCA 353 at [34].

<sup>3</sup> Courts (Remote Participation) Act 2010, s 7

<sup>4</sup> The parties have subsequently proposed particular timing for her appearance by consent.

<sup>5</sup> Employment Court of New Zealand "Guideline for Appearing by Audio-Visual Link, Including in

[10] Counsel for the defendant will need to ensure that documents to be relied on are available for Ms Twigg’s use during the hearing. Counsel will also need to confirm that Ms Twigg has been provided with a copy of the Court’s “Summary of Guidelines for a Witness Giving Evidence by Audio-Visual Link Including in Virtual Hearings”.<sup>6</sup>

[11] There is no issue as to costs.

Kathryn Beck  
Judge  
for the full Court

Judgment signed at 4.30 pm on 30 August 2024

---

<sup>6</sup> Virtual Hearings” <[www.employmentcourt.govt.nz](http://www.employmentcourt.govt.nz)>. Employment Court of New Zealand “Summary of Guidelines for a Witness Giving Evidence by Audio-Visual Link Including in Virtual Hearings” <[www.employmentcourt.govt.nz](http://www.employmentcourt.govt.nz)>.