

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

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

**[2025] NZEmpC 111
EMPC 438/2024**

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

AND IN THE MATTER OF an application for witnesses to appear via
Audio-Visual Link

BETWEEN ALLIED INVESTMENTS LIMITED
Plaintiff

AND PETER JONES
Defendant

Hearing: On the papers

Appearances: S Hornsby-Geluk, counsel for the plaintiff
T P Cleary, counsel for defendant

Judgment: 4 June 2025

**INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN
(Application for witnesses to appear via AVL)**

[1] This proceeding is set down to be heard in Wellington for four days beginning on Monday 16 June 2025.

[2] The plaintiff, Allied Investments Ltd, has now applied for two of its witnesses, Mathew Whibley and Alan Timms, to give evidence to the Employment Court by way of audio-visual link.

- [3] The application is made on the grounds that:
- (a) Mr Whibley is based in Hamilton and Mr Timms is based in Auckland;
 - (b) The nature of the proceedings is such that the evidence to be given by the witnesses is of a peripheral (but relevant) nature. Further, the evidence to be given by each of the witnesses is brief.
 - (c) The courtroom within which the case will be heard in Wellington has AVL facilities. It is proposed that both witnesses would give evidence from Allied Investments's Hamilton office or from a courtroom in Hamilton or Auckland. Accordingly, the availability and quality of the technology to be used are likely to be good.
 - (d) There is unlikely to be any discernible impact on the effective maintenance of the right of other parties to the proceeding.
 - (e) Mr Whibley is not an employee of Allied Investments.
 - (f) The week of the hearing is particularly busy for Mr Whibley.
 - (g) Mr Timms is based in Auckland and, given the length and nature of his evidence, his attendance in Wellington would seem unwarranted.

[4] Allied Investments relies on the Courts (Remote Participation) Act 2010 and the Employment Court's guideline for appearing via audio-visual link.¹

[5] The defendant, Peter Jones, does not oppose the application.

¹ Courts (Remote Participation) Act 2010, ss 5 and 7; Employment Court "Guideline for Appearing by Audio-Visual Link, Including in Virtual Hearings" (February 2022) <employmentcourt.govt.nz>.

Witnesses can give evidence via AVL

[6] While the ordinary way for a witness to give evidence in a civil proceeding is orally in a courtroom within the presence of a judge, the parties and any interested public, there is no presumption in favour of giving evidence in that way.²

[7] In considering such an application, the Court is to apply the criteria in s 5 of the Courts (Remote Participation) Act, which 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.

[8] I am satisfied that using AVL for the named witnesses in the current situation is suitable. The availability and quality of the technology to be used are likely to be good. There is no reason to consider that hearing the evidence remotely will adversely impact on Mr Jones's rights, or the proceeding.

[9] The application is accordingly granted, and the witnesses are permitted to provide their evidence via AVL from Allied Investments's Hamilton office, located at 4 Somerset Street, Frankton.

² High Court Rules 2016, r 9.51; Evidence Act 2006, s 83; *Wealleans v R* [2015] NZCA 353 at [34].

[10] Counsel for Allied Investments is to liaise with the Court and counsel for Mr Jones to make the necessary arrangements and ensure that the agreed bundle of documents is available when the witnesses give evidence.

[11] There is no order for costs.

J C Holden
Judge

Judgment signed at 11.30 am on 4 June 2025