

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

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

**[2025] NZEmpC 13
EMPC 168/2023**

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 VICTORIA JEON (AKA JONG AI
PARK) AS TRUSTEE OF THE JESUS
AROMA CHURCH TRUST
Plaintiff

AND LABOUR INSPECTOR
Defendant

Hearing: On the papers

Appearances: Seungmin Kang, counsel for plaintiff
G La Hood, counsel for defendant

Judgment: 5 February 2025

**INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH
(Application for witness to appear by audio-visual link)**

[1] This proceeding is set down to be heard in Auckland on 20–21 May 2024. On 16 January 2025, the plaintiff applied for leave for one of her witnesses, Joseph Jeon, to give his evidence by audio-visual link (AVL). The grounds for the application are:

- (a) Mr Jeon works and resides in South Korea.
- (b) For Mr Jeon to appear in person would be financially prejudicial to him given the travel costs and temporary loss of income he would encounter.

- (c) The internet connection and technology available would be acceptable and have minimal impact on the “administration of justice”.

[2] The defendant does not oppose the application.

Analysis

[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.¹

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

[5] The Courts (Remote Participation) Act 2010 provides for evidence to be able to be given by AVL in civil proceedings.³ The criteria to apply is in s 5 of that Act and includes the nature of the proceeding, the availability and quality of the technology, and other practical matters such as the potential impact on the use of technology on the effective maintenance of the rights of the parties to the proceeding.

[6] There is nothing about the nature of the hearing, or the anticipated evidence to be given by Mr Jeon, to suggest that using AVL would be unsuitable. Mr Jeon has a suitable laptop and access to a fast broadband service and South Korea has a reputation for good internet connections. There are no factors that weigh against granting the application.

Outcome

[7] 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.⁴ Counsel should ensure that this is able to take place.

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

² *Wealleans v R* [2015] NZCA 353 at [34].

³ Courts (Remote Participation) Act 2010, s 7(1).

⁴ Employment Court of New Zealand “Guideline for Appearing by Audio-Visual Link, Including in Virtual Hearings” <www.employmentcourt.govt.nz/what-to-expect/before-a-hearing/#AVL>.

[8] Counsel for the plaintiff will need to ensure that copies of documents to be relied on are available for Mr Jeon's use during the hearing. Counsel must confirm that Mr Jeon 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".⁵

[9] There are no issues as to costs.

K G Smith
Judge

Judgment signed at 12 pm on 5 February 2025

⁵ 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/info-guidance/during-a-hearing/#evidence>.