IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI

[2025] NZEmpC 131
EMPC 227/2025

IN THE MATTER OF	challenges to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for an interim injunction
BETWEEN	MARITIME UNION OF NEW ZEALAND First Applicant
AND	RAIL AND MARITIME TRANSPORT UNION INCORPORATED Second Applicant
AND	LYTTELTON PORT COMPANY LIMITED Respondent

Hearing:	25 June 2025 (via audio visual link)
Appearances:	S Mitchell KC and A Drumm, counsel for the applicants R Wooders and Z Fong, counsel for the respondent
Judgment:	1 July 2025

INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN
(Application for an interim injunction)

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[1] The Maritime Union of New Zealand and the Rail and Maritime Transport Union filed an application for an interim injunction restraining Lyttelton Port Company Ltd from taking any further steps to implement Lyttelton Port Company's proposal dated 9 June 2025 to make union members redundant, pending the hearing of Lyttelton Port Company's challenges in this Court. That hearing now also encompasses a challenge brought by the unions.

[2] The challenges referred to are non-de novo challenges to a determination of the Employment Relations Authority.[1] The unions' challenge was accepted after the Court granted them leave to file it outside the 28-day time prescribed by the Employment Relations Act 2000.[2]

[3] At the hearing of their application for an interim injunction, the unions advised that they were only seeking to restrain the Lyttelton Port Company from taking steps in respect of its proposed restructuring in the period between 7 July 2025, when the Lyttelton Port Company intended to confirm successful applicants for new positions, and the hearing of the challenges to the Authority's determination, which is to take place in the week commencing 14 July 2025.

[4] The challenges concern the Authority's findings on whether Lyttelton Port Company breached its obligations to the unions by not developing its restructuring proposal with the unions prior to it being presented for formal consultation with all workers. The Authority found the failure to do so was in breach of express terms of the applicable collective agreements and mutual good faith obligations.[3]

[5] The Authority made a compliance order directing Lyttelton Port Company to immediately halt current direct consultation with the workers subject to union coverage, and to engage in structured consultation on the restructuring proposal with the unions as soon as practicable, to allow constructive engagement and debate on the efficacy or otherwise of the proposal advanced, including seeking to secure agreement on any changes to the current coverage provisions in the existing collective agreements.[4]

[6] Lyttelton Port Company says that it has complied with the terms of the compliance order but challenges the determination because it does not agree that it was in breach of its obligations to the unions. It seeks that the relevant parts of the determination be set aside, namely paragraphs [54], [57], [60], [63], and [64]. It also seeks costs.

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1 *Maritime Union of New Zealand and Anor v Lyttelton Port Company Ltd* [2025] NZERA 231.
2 *Maritime Union of New Zealand and Anor v Lyttelton Port Company Ltd* [2025] NZEmpC 127.
3 *Maritime Union,* above n 1, at [60].
4 At [64].

[7] The unions say Lyttelton Port Company not only breached its obligations in the ways found by the Authority, but also breached cl 2 of the collective agreements. The Authority had not accepted the unions' argument in respect of cl 2.

[8] The unions also say that the compliance order should have required Lyttelton Port Company to withdraw its proposal and commence a blank slate approach, contrary to the approach directed by the Authority.[5]

The parties agree on the relevant legal principles

[9] The legal principles that apply in relation to an application for an interim injunction are well-settled. The Court looks at where the overall justice lies, taking into account:[6]

(a) whether there is a serious question to be tried; and

(b) the balance of convenience.

There is a serious question to be tried

[10] As acknowledged by Lyttelton Port Company, the threshold as to whether there is a serious question to be tried is a low one.[7] Both parties are challenging the Authority's determination. There clearly is a serious question to be tried as to whether Lyttelton Port Company has breached its obligations to the unions.

[11] Also relevant is whether Lyttelton Port Company has since remedied the breach. This includes whether it has complied with the Authority's order, (as it says it has) or not (as contended by the unions). In addition, there is the issue of whether the Authority's compliance order was sufficient to address the found breaches, or whether it should have gone further and required Lyttelton Port Company to withdraw its

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5 At [62].

6 *Harvest Bakeries Ltd v Klissers Farmhouse Bakeries Ltd* [1985] 2 NZLR 129 (CA) at 133; and *X v Y Ltd and NZ Stock Exchange* [1992] 1 ERNZ 863 (EmpC) at 872-873.

7 *Communication and Energy Workers' Union Inc v Telecom New Zealand* [1993] 2 ERNZ 429 (EmpC) at 439 and 455.

proposal and commence consultation with the unions on a blank slate approach, which is what the unions contend.[8]

[12] I accept that whether Lyttelton Port Company has now met its obligations to the unions pursuant to the compliance order, and whether the compliance order made was adequate, are serious questions to be tried.

Balance of convenience favours the unions

[13] The unions say their position, and that of their members, will be completely compromised if the foreman's role is made redundant, as proposed by Lyttelton Port Company, by the time the matter is heard by the Employment Court.

[14] It says that it takes no issue with the steps preceding the confirmation of successful applicants for new replacement positions being undertaken. Those steps include affected employees lodging applications and the selection process continuing. What the unions wish to put a hold on is the confirmation of the successful applicants to the new positions being created.

[15] Lyttelton Port Company's opposition to the application for an interim injunction was raised prior to the unions advising that they were only seeking to injunct the actions of Lyttelton Port Company for the period of 7 July to the hearing commencing on 14 July 2025. Nevertheless, Lyttelton Port Company maintained its opposition and pointed to:

(a) the further substantial delay in actioning the proposed decision if the application is granted;

(b) the availability of other remedies for the unions if the application is not granted;

(c) the unions delay in filing the application; and

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[8] Relying on *Television New Zealand Ltd v E tū Inc* [2024] NZEmpC 93, [2024] ERNZ 356.

(d) its contention that Lyttelton Port Company's decision is unlikely to change with further consultation.

[16] It says an interim injunction would lead to more uncertainty for employees who have already been dealing with the proposal for over three months. It also points to the acceptance by Lyttelton Port Company of four applications for voluntary severance from union members, and one from an employee employed on an individual employment agreement, and says that some of those actions would be difficult to now reverse.

[17] In addition, Lyttelton Port Company points to what it says are significant operational challenges and business continuity issues if the application for an interim injunction is granted. It says that having accepted voluntary redundancies, if it was not able to fill the new leadership roles in the new structure, that would pose significant health and safety and operational challenges for Lyttelton Port Company. There was evidence, however, from the unions of secondment arrangements that would ameliorate Lyttelton Port Company's concerns over health and safety and operational matters.

[18] I acknowledge the points made by Lyttelton Port Company, and the impact that the interim injunction would have on the affected employees, in particular that there would be no certainty of appointments in the meantime. Against that, however, the period now sought by the unions is brief. In the overall scheme of things, that delay will have only very limited impact on Lyttelton Port Company and its employees.

[19] Further, should the Court's substantive judgment in this matter ultimately lead to change in the restructuring proposal, after people have been confirmed in new roles, that would have a more disruptive impact. It is preferable that any appointments are made on a certain foundation.

[20] While Lyttelton Port Company suggests the unions and their members have other remedies available to them, those remedies would not be effective here. In *New Zealand Air Line Pilots Association Inc v Jetconnect Ltd*, the Court referred to the potential for a penalty under s 4A of the Employment Relations Act 2000, but noted

the extraordinary requirements before a penalty would be imposed.[9] The Court there also relevantly noted that the availability of monetary remedies is not decisive in employment matters.[10] The unions acknowledged that some foremen have accepted voluntary redundancy but noted that they did so in the face of the restructure. Other employees made redundant may be able to bring personal grievances, but the unions say that course would be unsatisfactory and the remedies available would be insufficient for dealing with the alleged procedural deficiencies. What the unions seek is the opportunity to properly influence the outcome of the process, not to achieve remedies for their members after the event.

[21] While Lyttelton Port Company points to delay on the part of the unions, that has to be seen in context. The parties were endeavouring to work through matters in accordance with the compliance order made by the Authority, with discussions continuing up until 27 May 2025. The application for an interim injunction was filed on 12 June 2025 and as noted, it is now apparent that it is aimed only at steps planned from 7 July 2025.

[22] Finally, Lyttelton Port Company suggests its decision is unlikely to change, even with further consultation. It points to the consultation already undertaken and the feedback received. However, if the unions were wholly successful in the Court, the process would need to restart. It would be premature to find that, even in those circumstances, the outcome would be the same as that reached.

[23] For those reasons I consider that the balance of convenience favours the issuing of the interim injunction.

Overall justice supports interim injunction

[24] Standing back and looking at the overall justice in the circumstances, I consider that, for the reasons already identified, it is appropriate to make the interim injunction sought.

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9 *New Zealand Air Line Pilots Association Inc v Jetconnect Ltd* (2009) 6 NZELR 632 (EmpC) at [32].

10 At [33].

Interim injunction made

[25] Accordingly, I make an order for an interim injunction, restraining Lyttelton Port Company from confirming successful applicants for new positions, or taking any other steps to implement the proposed restructuring after 7 July 2025.

[26] This order remains in place pending further order of the Court. It will be considered further in the course of the fixture commencing on 14 July 2025.

[27] Costs are reserved.

J C Holden
Judge

Judgment signed at 9.30 am on 1 July 2025