

**ORDER PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING  
PARTICULARS OF THE PARTIES**

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

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2025] NZEmpC 146  
EMPC 294/2025**

IN THE MATTER OF	an application for sanctions for breach of a compliance order
AND IN THE MATTER OF	an application to waive or postpone the payment of a filing fee
BETWEEN	RDJ Plaintiff
AND	SGF Defendant

Hearing: On the papers

Appearances: S A McKenna, counsel for applicant for fee waiver

Judgment: 16 July 2025

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**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS  
(Application to waive or postpone the payment of a filing fee)**

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**Introduction**

[1] The plaintiff wishes to advance an application for sanctions against SGF for alleged non-compliance with compliance orders made in the Employment Relations Authority. The plaintiff has applied for waiver or postponement of the filing fee; it is said that payment of the fee will cause undue financial hardship.

[2] There is no express power conferred on the Registrar to waive, or postpone, the payment of fees. In these circumstances the application has been referred to me for decision.

### **Non-publication**

[3] The Authority made permanent orders prohibiting publication of the names and identifying details of the parties and certain financial information provided by SGF.<sup>1</sup> It is desirable, in the interests of justice and to preserve the integrity of those orders, to make parallel orders in this Court.<sup>2</sup>

[4] I accordingly make an interim order that the names and identifying details of each of the parties not be published. I will revisit the issue after hearing from the parties.

### **Background**

[5] The background to the application can be summarised as follows.

[6] The plaintiff pursued a successful personal grievance against their employer. The Authority made a number of orders in their favour.<sup>3</sup> The defendant company did not satisfy those orders and the plaintiff was obliged to return to the Authority for further orders. The Authority then made compliance orders against the company. The plaintiff contends that the company has failed to comply with the Authority's compliance orders and wishes to seek further orders from the Court, under s 140(6) of the Employment Relations Act 2000.<sup>4</sup>

[7] Under s 140 the Court may, if it is satisfied that a party has failed to comply with compliance orders made by the Authority, fine the defaulting party (up to \$40,000); sequester their property; and/or imprison them.

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<sup>1</sup> *RDJ v SGF* [2024] NZERA 260 at [2]-[3].

<sup>2</sup> *Z v Y Ltd* [1993] 2 ERNZ 469 (EmpC) at 496.

<sup>3</sup> *RDJ v SGF* [2023] NZERA 462; *RDJ v SGF* [2023] NZERA 541.

<sup>4</sup> *RDJ v SGF*, above n 1.

[8] Breach of a compliance order, made by either the Authority or the Court, is a form of contempt.<sup>5</sup> It is self-evident that there are important public policy reasons why such matters should be able to be brought to the Court’s attention. That, in turn, requires parties to be able to access the Court. It is well accepted that financial resource is a barrier for many in this jurisdiction.<sup>6</sup>

### **Does the Employment Court have the power to waive or postpone fees?**

[9] Regulation 75 of the Employment Court Regulations 2000 provides that the fees specified in sch 3 are payable to the Registrar of the Court for the matters set out in that schedule.

[10] Regulation 75(2) provides that: “Every such fee is payable by the person commencing the proceedings in respect of which the fee is payable.”

[11] Schedule 3 of the Regulations sets out the fees for various steps in a proceeding. Filing a statement of claim in the form required in the present case comes with a filing fee of \$349.

[12] Regulation 5 deals with filing documents by post. It provides that if a document is sent by post any prescribed fees payable must accompany that document, unless it has already been paid. In relation to challenges, reg 7 provides that a statement of claim must be accompanied by a copy of the determination to which it relates, and the prescribed fee must be paid at or before the time at which the statement of claim is filed.

[13] Section 237B of the Act provides that regulations may be made to empower the Court’s Registrar to waive, reduce or postpone the payment of a fee required in connection with a proceeding or an intended proceeding.

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<sup>5</sup> *New Zealand Railways Corp v New Zealand Seamen’s IUOW* (1989) ERNZ Sel Cas 321 (LC).

<sup>6</sup> See Helen Winkelmann “Access to Justice: We Need More (Than) Lawyers” (Address to University of Waikato, 24 August 2022).

[14] While s 237B was enacted over seven years ago,<sup>7</sup> no regulations have been made pursuant to it. Somewhat surprisingly, it appears that the Employment Court is the only court in New Zealand which does not have express fee waiving, reduction or postponement powers.<sup>8</sup>

[15] The question that arises, for the purposes of the current application, is whether the way in which regs 75(2), 5 and 7 are formulated, together with the absence of regulations made pursuant to s 237B, mean that there is no power to waive, reduce or postpone the payment of filing and hearing fees in this jurisdiction. The answer to that question is essentially one of statutory interpretation.

[16] I start with reg 6 of the Employment Court Regulations. It relates to procedural matters and provides that:

**6 Procedure**

- (1) Every matter that comes before the court must be disposed of as nearly as may be in accordance with these regulations.
- (2) If any case arises for which no form of procedure has been provided by the Act or these regulations or any rules made under section 212(1) of the Act, the court must, subject to section 212(2) of the Act, dispose of the case—
  - (a) as nearly as may be practicable in accordance with—
    - (i) the provisions of the Act or the regulations or rules affecting any similar case; or
    - (ii) the provisions of the High Court Rules 2016 affecting any similar case; or
    - (iii) the provisions of the rules (other than those on registrable Australian judgments) in the Trans-Tasman Proceedings Regulations and Rules 2013, ...; or
  - (b) if there are no such provisions, then in such manner as the considers will best promote the object of the Act and the ends of justice.

[17] As I have said, no regulations have been made in respect of fee waiver, reduction, or postponement, and so reg 6(1) does not apply. There are no rules of this Court, and no regulations affecting any similar case. That means that reg 6(2)(a)(i)

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<sup>7</sup> Having been introduced on 1 March 2017 by s 14 of the Employment Relations Amendment Act (No 2) 2016.

<sup>8</sup> High Court Fees Regulations 2013, reg 18; District Courts Fees Regulations 2009, reg 8; Family Courts Fees Regulations 2009, reg 7; Court of Appeal Fees Regulations 2001, reg 5; Supreme Court Fees Regulations 2003, reg 5.

does not apply either. Nor does reg 6(2)(a)(ii), as it is the High Court Fees Regulations 2013, not the High Court Rules, which deal with fee waiver and postponement.

[18] What of reg 6(2)(b)? Regulation 6(2)(b) is a broad, catch-all provision. It has been described as “the final empowering provision in a hierarchy” after reg 6(2)(a).<sup>9</sup> The Court has previously observed that its purpose, and the purpose of reg 6 in general, “is plainly directed at ensuring that the processes adopted by the High Court can be applied in the Employment Court, as a default position.”<sup>10</sup> In this regard, it is notable that the Court has routinely used the reg 6(2) catch-all to apply the approach in the Senior Courts (Access to Court Documents) Rules 2017 by analogy. The Court has done this in reliance on reg 6(2)(b) (the interests of justice) even though access to documents provisions are no longer contained in the High Court Rules.<sup>11</sup>

[19] It seems to me that the same approach may be applied by analogy, enabling the Court to apply reg 18 (“Power to waive fees”) of the High Court Fees Regulations and its associated criteria, but in a way that best promotes (1) the objects of the Employment Relations Act and (2) the ends of justice, as required by reg 6(2)(b).

[20] As to the first point (promoting the objects of the Act), it is in my view unarguable that an ability to waive, reduce or postpone fees in appropriate cases is consistent with the underlying objectives of the Employment Relations Act, including to promote the effective enforcement of employment standards under s 3(ab). Further, facilitating access to the Court – rather than reinforcing barriers based on financial means – promotes good faith behaviour. This is a key underlying objective in the legislation under s 3(a). It also goes some way to acknowledging and addressing (as the Court is required to do) the inherent imbalance of bargaining power between employees and employers under s 3(a)(ii).

[21] As to the second point identified in reg 6(2)(b) (promoting the ends of justice), it is equally clear that an ability to waive, reduce or postpone fees in appropriate cases

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<sup>9</sup> *Zhou v Chief Executive of the Department of Labour* [2011] NZEmpC 36 at [75].

<sup>10</sup> *Prasad v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 160 at [5].

<sup>11</sup> See *Prasad*, above n 10; *Sawyer v The Vice-Chancellor of Victoria University of Wellington* [2019] NZEmpC 7 at [8]; and *Johnston v The Fletcher Construction Co Ltd* [2020] NZEmpC 117 at [9]-[11].

is consistent with this goal, in particular by supporting access to justice.<sup>12</sup> As the UK Supreme Court stated in *R v Lord-Chancellor*:<sup>13</sup>

Courts exist in order to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced... In order to perform that role, people must in principle have unimpeded access to them. Without such access, laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade.

[22] And as is well established, an interpretation of legislation which supports the fundamental common law right of access to the courts is to be preferred.<sup>14</sup>

[23] Section 189(1) of the Act is also pivotal. Under that provision the Court has express jurisdiction, “for the purpose of supporting successful employment relationships and promoting good faith behaviour”, to “make such decisions or orders ... as in equity and good conscience it thinks fit”, so long as they are not inconsistent with the Act or any applicable employment agreement. It is notable that the caveat in s 189 is limited in scope, does not refer to the Regulations and so does not operate as a carve-out or no-go zone for the Court in respect of fees.

[24] Returning to s 237B. What, if anything, is its relevance? In particular, does the fact that it permits the Governor-General to make regulations authorising an Employment Court Registrar to waive, reduce or postpone the payment of a fee required in connection with a proceeding support an inference that Parliament intended any fee waiving power to be conferred via that route, and that route only? Or, to put it another way, if the power to waive, reduce or postpone already exists under reg 6(2)(b) and/or s 189, why did Parliament bother enacting s 237B – what function is it intended to serve?

[25] The answer likely lies in the identity of the decision-maker. Section 237B contemplates a power specifically for a *Registrar* to waive, reduce or postpone

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<sup>12</sup> *R v Lord Chancellor* [2017] UKSC 51, [2020] AC 869.

<sup>13</sup> At [68].

<sup>14</sup> See the discussion in Ross Carter *Burrows and Carter Statute Law in New Zealand* (6<sup>th</sup> ed, LexisNexis, Wellington, 2021) at 431-433 and 436-438, endorsed in *Fitzgerald v R* [2021] NZSC 131, [2021] 1 NZLR 551 at [209]. See also New Zealand Bill of Rights Act 1990, s 27(3).

payment of fees. That contrasts with the identity of the decision-maker in reg 6(2)(b) and s 189, which sit squarely with a *Judge*.

[26] Analysed in this way, the absence of regulations under s 237B simply reflects the fact that Registrars of this Court do not presently have the power to waive, reduce or postpone the payment of fees; any application must accordingly be considered by a Judge. A more restrictive interpretation is not required by the legislation and would be inconsistent with the right to access the courts.<sup>15</sup>

[27] I conclude that a Judge may order that a fee be waived, reduced or postponed. In deciding whether or not to do so, useful guidance will likely be found in the criteria contained within the High Court Fees Regulations. Ultimately the touchstones will be the twin pillars of the Court's jurisdiction, namely considerations of equity and good conscience.<sup>16</sup>

[28] If I am wrong about the Court's power to waive or reduce, I consider it beyond doubt that a Judge may postpone payment of a fee.<sup>17</sup> In this regard reg 75 is notably silent as to *when* any fee must be paid. It provides only for *what* is to be paid (reg 75(1) and sch 3), and by *whom* (reg 75(2)).<sup>18</sup> While regs 5 and 7 do state expressly that a fee "must" accompany documents filed by post and challenges, the apparently mandatory terms of those regulations must be read in context, including having regard to reg 4, which provides that:

These regulations must be construed in a manner that best secures the speedy, fair, and just determination of proceedings before the court.

[29] Further, the Court has inherent powers, as a Court of record,<sup>19</sup> to regulate or control its proceedings.<sup>20</sup> The timing of payment of a fee, guided by equity and good conscience and the general interests of justice in this specialist jurisdiction, seems to me to fall squarely within the Court's powers.

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<sup>15</sup> *R v Lord-Chancellor*, above n 12; New Zealand Bill of Rights Act 1990, s 27(3).

<sup>16</sup> Section 189.

<sup>17</sup> A party liable to pay a fee might be interested in postponement even without the chance of waiver because they may be in a better position to pay the fee after the proceeding has been determined.

<sup>18</sup> As well as whether the fee includes GST: reg 75(3).

<sup>19</sup> Employment Relations Act 2000, s 186(1).

<sup>20</sup> See, for example, *Siemer v Solicitor-General* [2012] NZCA 188, [2021] 3 NZLR 43 at [59].

[30] As I have also said, where it is open to the Court to do so, a rights-centred approach to the interpretative exercise is to be adopted, and regard had to the underlying objectives of the legislation. As is well established, legislative use of the word “must” may in appropriate circumstances be interpreted as “may”.<sup>21</sup> I cannot accept that a strict interpretation is required, and nor do I think that construing the Regulations in such a way would best secure the fair and just determination of proceedings before the Court – far from it.

[31] The Court reached the opposite conclusion on waiver in *Y v Kevin Hyde Engineering Ltd*.<sup>22</sup> In that case, having been asked to waive a filing fee, Judge Couch conducted an analysis of s 219 of the Act, concluding that while that section could be used to extend the time for payment, its wording did not permit a complete waiver. The Judge reasoned that a failure to do something could not be construed as doing it “informally”, and that a power to waive fees ought not to be assumed by inference when other courts are given it by express legislative provision.

[32] The judgment in *Hyde* arose in the context of an application for a freezing order, and centred almost exclusively on s 219, dealing with an obiter statement made by then Chief Judge Colgan in *Arkompot v Thai Chilli Co Ltd (T/A Thai Chilli)*.<sup>23</sup> The judgment does not deal with the broader procedural gateway provided by reg 6(2)(b), nor the distinction between the powers of a Registrar and the powers of a Judge. Nor did the Court have the benefit of the Supreme Court’s decision in *R v Lord-Chancellor* at the time *Hyde* was decided.

[33] I conclude that while the Registrar has no power to waive, reduce or postpone payment of the fees set out in sch 3 of the Regulations, a Judge does.

### **Consideration of the application now before the Court**

[34] I now move to consider the application currently before the Court.

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<sup>21</sup> *Simpson v Attorney-General* [1955] NZLR 271 (CA) at 281.

<sup>22</sup> *Y v Kevin Hyde Engineering Ltd* [2013] NZEmpC 129, [2013] ERNZ 301.

<sup>23</sup> *Arkompot v Thai Chilli Co Ltd t/a Thai Chilli* [2011] NZEmpC 101.

[35] I accept that the plaintiff is in a difficult financial position. The difficulties they are in appear, at this stage at least, to have been exacerbated by their ex-employer's failure to comply with orders made against it by the Authority, both in respect of the Authority's substantive orders and its compliance orders. The plaintiff is in receipt of legal aid.

[36] As I have said, useful guidance may be drawn (by analogy) from the High Court Fees Regulations. Those regulations provide that a fee may be waived on the basis of one of the criteria specified in reg 19, that the person is unable to pay the fee. Alternatively, a fee may be waived where the matter concerns a matter of genuine public interest and it is unlikely to be commenced or continued unless the fee is waived.<sup>24</sup>

[37] A person is deemed to be unable to pay the fee sought to be waived where:

- (a) the person has been granted legal aid in respect of the matter for which the fee is payable; or
- (b) the person is dependant for the payment of his or her living expenses on a specified benefit, or is wholly dependent for the payment of his or her living expenses on New Zealand superannuation or a veteran's pension; or
- (c) they would otherwise suffer undue financial hardship.

[38] A proceeding is deemed to concern a matter of genuine public interest where:

- (a) it will determine a question of law that is of significant interest to the public or to a substantial section of the public; or
- (b) it raises issues of significant interest to the public or to a substantial section of the public and has been commenced by an organisation that is required to promote matters in the public interest.

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<sup>24</sup> See regs 18(2)(a) and 18(2)(b).

[39] The plaintiff is in receipt of legal aid. I accept that they are unable to pay the fee and that it is appropriate to waive it in the circumstances.

[40] While it is not necessary to decide the point, I observe that if the plaintiff had not been in receipt of legal aid it may well have been arguable that the fee should be waived having regard to the broader public interest of enabling proceedings of this sort (alleged failure to comply with orders of the employment institutions) to come to the Court without impediment.

### **Result**

[41] The application for waiver of the filing fee is granted.

[42] No issue of costs arises on this application.

Christina Inglis  
Chief Judge

Judgment signed at 4.30 pm on 16 July 2025