

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

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

**[2025] NZEmpC 188
EMPC 87/2025**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for leave to file a statement of defence out of time
BETWEEN	ANGHARAD O'BRIEN Plaintiff
AND	THE PLATFORM MEDIA NZ LIMITED Defendant

Hearing: On the papers

Appearances: B Buckett and L C Fisher, counsel for plaintiff
M W O'Brien, counsel for defendant

Judgment: 26 August 2025

**INTERLOCUTORY JUDGMENT OF JUDGE HELEN DOYLE
(An application for leave to file a statement of defence out of time)**

Application for leave

[1] The Platform Media NZ Ltd (Platform Media) has applied for leave to extend the time for filing a statement of defence to a non-de novo challenge to a determination of the Employment Relations Authority (the Authority).¹

[2] The challenge to the determination was filed and served on 28 February 2025.

¹ *O'Brien v The Platform Media NZ Ltd* [2025] NZERA 56.

[3] A statement of defence was required to be filed within 30 clear days of service of the statement of claim on 28 February 2025.²

[4] The date of 30 March 2025 was a Sunday and therefore not a working day. The next clear day was Monday 31 March 2025.³ A statement of defence was not filed on 31 March 2025.

[5] On 2 April 2025, Mr O'Brien, counsel for Platform Media, wrote to Ms Buckett, counsel for Ms O'Brien. He advised that he had been instructed by Platform Media in respect of the Employment Court matters and asked if she would consent to the late filing of the statement of defence. He also advised that if consent were not given, an application for leave would be made and that the refusal could be a factor in any subsequent costs award.

[6] On the afternoon of 4 April 2025, Ms Fisher, counsel for the plaintiff, emailed Mr O'Brien denying consent for the filing of the statement of defence out of time. Mr Plunket, the chief executive and founding editor of Platform Media, was overseas. The email stated that the plaintiff did not accept that Mr Plunket's overseas travel had any impact, because he had continued to communicate with Ms O'Brien and had sent correspondence to counsel's office. Ms Fisher also expressed concern that monies payable under the Authority determinations remained outstanding.⁴

[7] On 8 April 2025, an application for leave to extend the time for filing the statement of defence was filed and served, together with a draft statement of defence and an affidavit from Mr Plunket in support.

[8] Mr Plunket explained in his affidavit that he had been overseas between 19 and 29 March 2025. Platform Media had initially decided it would not use a lawyer for the challenges, but in his affidavit, Mr Plunket stated that there had been a change of

² Employment Court Regulations 2000, reg 19(2)(a).

³ Legislation Act 2019, s 55.

⁴ There are two challenges to determinations of the Employment Relations Authority involving Ms O'Brien and Platform Media, the current challenge and a related proceeding in EMPC 94/2025. A statement of defence was filed within the timeframe for doing so in the second proceeding.

heart in that regard. Towards the end of Mr Plunket's time overseas he telephoned Mr O'Brien to say Platform Media wanted to reengage him.

[9] Initially the application was opposed on several grounds and was set down for hearing. Shortly before the hearing a memorandum was filed on behalf of Ms O'Brien advising that the monies due under the Authority's determination had now been paid and, to that extent, her reasons for opposing the application were redundant.

[10] It was agreed by counsel that the hearing could be vacated. While the Court initially did not receive any submissions on behalf of Ms O'Brien, counsel wished to make submissions as to costs. The Court then granted the plaintiff an opportunity to make submissions as to costs.

Exercise of discretion

[11] The Court has a discretion to grant a defendant leave to defend proceedings when the statement of defence is not filed within the timeframe for doing so. The discretion must be exercised judicially and in accordance with established principles. The overriding consideration must always be in the interests of justice. Factors to be considered include the extent of the delay, the reasons for the delay, the conduct of the parties, any resulting prejudice from the delay, and the significance of the issues to the parties and more generally.⁵

[12] The period of delay in filing the statement of defence was between 31 March and 8 April 2025. That is a period of seven days, which cannot be categorised as a minimal delay. However, the period of delay needs to be considered with the request to consent to the late filing of the statement of defence on 2 April 2025.

[13] The affidavit evidence supports the claim that the delay was due to error or inadvertence rather than to a deliberate decision not to file a defence and then a change of heart. A statement of defence was filed within the timeframe for doing so in another

⁵ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38]. Although relating to leave to file an appeal out of time, the principles are equally applicable to an application to file a statement of defence out of time. See *Bay of Plenty District Health Board v CultureSafe NZ Ltd* [2019] NZEmpC 122 at [14].

claim between the same parties (EMPC 94/2025).⁶ That claim has some overlapping features, including a claim for arrears and lost wages.

[14] The prejudice to Ms O'Brien is limited to a delay in progressing the proceeding to hearing. The prejudice to Platform Media in not granting leave to extend the time for filing the statement of defence would be significant because the company would be unable to defend the challenge to the Authority's findings in its favour.

[15] The issues raised by the challenge cannot be said to be insignificant to the parties and more generally, particularly those related to the wages claim.

[16] In all the circumstances, I am satisfied that the interests of justice require the Court to grant leave to the defendant to defend the proceedings. Leave is granted accordingly.

Further steps

[17] The draft statement of defence filed with the application is to be finalised and filed and served within 10 working days of the date of this judgment.

[18] The Registrar is to arrange a telephone conference with the representatives to progress the setting down of the matter for hearing.

Costs

[19] Platform Media seek costs in the sum of \$5,019 assessed on a category 2 band A basis.⁷

[20] Ms O'Brien opposes costs. She submits that costs should lie where they fall because Platform Media defaulted in making payment in accordance with the Authority's determination. She says that gave good cause for the initial opposition. Alternatively, Ms O'Brien says that she is entitled to costs, or that any award of costs should be reduced due to its default in making payments ordered by the Authority.

⁶ See above n 4.

⁷ "Employment Court of New Zealand "Practice Directions" (1 September 2024) <www.employmentcourt.govt.nz> at No 18.

Finally, she submits that a Calderbank offer was unreasonably refused and the basis for costs is inaccurate and not a reasonable basis for costs.

[21] On 1 July 2025, an email was sent on behalf of Ms O'Brien to counsel for Platform Media. It was headed "without prejudice save as to costs." It stated materially with respect to the application to extend time to file a statement of defence:

In relation to the application to file a statement of defence out of time in light of the now respective satisfaction of the outstanding monies [due] under the Authority determination provided costs associated with that of \$1,500 plus GST are made. We would be willing to enter into a consent memorandum to withdraw.

[22] A response was sought by 4 pm the following day but was not received.

[23] On 13 July 2025, Mr O'Brien asked for clarification about whether the claim was to be withdrawn or whether there would be opposition to the application to file pleadings out of time.

[24] It was confirmed that the withdrawal was in relation to the application to extend time to file a statement of defence out of time on 14 July 2025.

[25] On 22 July 2025, a memorandum was received from counsel for Ms O'Brien advising that the monies had been paid and the reason for opposition was redundant.

[26] Ms O'Brien was then awarded costs by the Authority in the sum of \$2,250.⁸

[27] The communication to Platform Media's counsel on 1 July 2025 was contingent on payment of an amount towards costs in the Authority and was not a clear offer to settle. The Court does not take it into account in the exercise of its discretion as a Calderbank offer.

[28] Viewed in their totality, subsequent communications support the plaintiff's willingness to withdraw her opposition to the company's application to file pleadings out of time, and it was clear on 22 July 2025 that no opposition would be advanced.

⁸ *O'Brien v The Platform Media NZ Limited* [2025] NZERA 448.

[29] The main reason consent was not given on 2 April 2025 was that payment had not been made under the determination. An election to challenge a determination of the Authority does not operate as a stay; consequently, steps can be taken to enforce orders in the determination.⁹ Ms O’Brien’s affidavit in opposition to the application for leave refers to making an application in the Authority for a compliance order. The Court was advised at a directions conference that Platform Media had sought a stay of proceedings in the Authority. Payment was made to Ms O’Brien in or about late June 2025 and costs were awarded to her by the Authority.

[30] I do not conclude that the fact that payment was not made was a reasonable basis to refuse to consent to extend the time for filing the statement of defence in the circumstances. They are separate matters and require different considerations.

[31] Platform Media was required to undertake steps that would not otherwise have been necessary. Leave to extend time can be seen as an indulgence and an exception to the usual rule that success entitles a party to costs. I do not conclude that it is appropriate to categorise this matter as an indulgence in these circumstances where consent has been requested. This is a distinguishable situation from those in the cases the Court was referred to: *Taia v Ake Innovation Limited* and *Juahm Industries Company Ltd v Isnanto* where it was found an indulgence had been granted and no costs were awarded.¹⁰ *Juahm* was decided prior to *Almond v Read*, where the Court of Appeal placed some emphasis on the desirability of consent where there was an insignificant delay as a result of a legal adviser’s error and the proposed respondents have suffered no prejudice.¹¹

[32] Platform Media is the successful party and is entitled to a contribution towards its costs.

[33] I conclude that category 2 band A is appropriate for a costs assessment. Some adjustments are needed to the scale costs claimed. One day is claimed for filing an originating application under step 49 rather than 0.3 of a day for an interlocutory

⁹ Employment Relations Act 2000, s 180.

¹⁰ *Taia v Ake Innovation* [2024] NZEmpC 89 and *Juahm Industries Company Ltd v Isnanto* [2015] NZEmpC 152.

¹¹ *Almond v Read*, above n 5, at [39](b).

application under step 28. The application is an interlocutory application rather than an originating application. The appropriate step is 28. Costs are in the sum of \$717. The claim for steps 11, 12 and 13 in the sum of \$1,434 is appropriate.

[34] Ms Buckettt submits that if costs are to be awarded, there should be no award in respect of the provision of submissions. The Court retains a discretion, but the granting of leave was almost inevitable with the lack of opposition. In the circumstances, the submissions did not need to be detailed. A ten per cent deduction is made to step 52 and the sum of \$1,075.50 is appropriate.

[35] In the exercise of the Court's discretion an appropriate award of costs in this case is the total sum of \$3,226.50.

[36] Ms O'Brien is ordered to pay costs to Platform Media in the sum of \$3,226.50.

Helen Doyle
Judge

Judgment signed at 3 pm on 26 August 2025