

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

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

**[2025] NZEmpC 211
EMPC 390/2025**

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

AND IN THE MATTER OF an application for stay of execution

BETWEEN DA HAI INVESTMENT LIMITED
Plaintiff

AND ANN SHEILA LEBRETON
Defendant

Hearing: On the papers

Appearances: PJ Marshall, counsel for plaintiff
R Johnston, advocate for defendant

Judgment: 18 September 2025

**INTERLOCUTORY JUDGMENT OF
CHIEF JUDGE CHRISTINA INGLIS
(Application for stay of execution)**

Introduction

[1] The plaintiff company has applied for a stay of execution of orders made against it by the Employment Relations Authority (the Authority).¹ The application is opposed.

[2] The application arises in the context of a challenge filed by the plaintiff against the Authority's determination, which is being pursued on a non-de novo basis. In its

¹ *Lebreton v Da Hai Investment Ltd* [2025] NZERA 451.

determination dated 25 July, the Authority ordered the plaintiff to pay the defendant the amounts of:

- (a) \$13,000 compensation;
- (b) \$8,112.50 (gross) in lost remuneration;
- (c) \$1,180 (gross) unpaid sick leave;
- (d) \$743.40 (gross) holiday pay;
- (e) interest on the figures set out above in (b) to (d) from 1 June 2023 to 25 July 2025.

Legal framework

[3] A challenge does not operate as a stay of proceedings on a determination of the Authority.² That reflects the principle that a successful litigant is ordinarily entitled to the fruits of their success.³ There are, however, circumstances in which a stay is appropriate, and the Court may order a stay of proceedings where a challenge against a determination of the Authority is pursued.⁴ The challenging party must satisfy the Court that adequate grounds have been made out.⁵ Any orders made must be the least necessary to preserve the position of the challenging party; and that party can be expected, where a monetary judgment is involved, to make some concession, such as an offer to make a payment into Court pending the outcome of the appellate process.⁶

[4] In determining whether a stay ought to be granted, the Court must balance the interests of the parties and generally has regard to the following non-exhaustive list of factors:⁷

² Employment Relations Act 2000, s 180.

³ *Duncan v Osborne Building Ltd* (1992) 6 PRNZ 85 (CA) at 87.

⁴ Employment Court Regulations 2000, reg 64.

⁵ *Grove v Archibald* [1998] 2 ERNZ 125 (EmpC) at 128–129.

⁶ *Bathurst Resources Ltd v L & M Coal Holdings Ltd* [2020] NZCA 186, (2020) 25 PRNZ 341 at [19].

⁷ *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [5]; and *Dymoocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (CA).

- (a) whether the challenge will be rendered ineffectual if a stay is not ordered;
- (b) whether the challenge is brought for good reasons and being pursued in good faith;
- (c) whether the successful party at first instance will be injuriously affected by a stay;
- (d) the extent to which a stay will impact on third parties;
- (e) the novelty and/or importance of the questions involved;
- (f) the public interest in the proceeding; and
- (g) the overall balance of convenience.

[5] Other factors, including the likely merits of any related challenge, can also be relevant.⁸ Ultimately, the overarching consideration is the interests of justice.

Analysis

Will the challenge be rendered ineffectual if a stay is not granted?

[6] The plaintiff's application is primarily focused on this factor. In this regard it is submitted that if the Court finds in favour of the challenge, and finds that the employment relationship was casual rather than permanent, it is likely that the financial remedies orders in the defendant's favour will be set aside. It is further said that the defendant is on a fixed income, has regular household expenses and has a debt that she is in the process of repaying. The risk is that, if the plaintiff pays the amounts owing to the defendant under the Authority's determination, they will dissipate the sums and be unable to repay them in the event that the challenge succeeds.

⁸ *Broadspectrum (NZ) Ltd v Nathan* [2017] NZCA 434, [2017] ERNZ 733 at [34].

[7] There is nothing to suggest that the plaintiff would be unable to proceed with its challenge if no stay was granted; rather the question arises as to whether, if it succeeds, it may face a pyrrhic victory. I accept, based on the affidavit evidence before the Court, that there is a possibility that the defendant would not be in a position to repay the awards if the challenge succeeds and if, as a result, the awards are set aside. I deal with that concern, and how the parties' respective interests might best be weighed, below.

Was the challenge brought for good reasons, and is it being pursued in good faith?

[8] I accept, for present purposes, that the challenge is brought in good faith.

Will the successful party at first instance be injuriously affected by a stay?

[9] The plaintiff accepts that if a stay of execution is granted, the defendant will be impacted by not having access to, and the use of, the amounts ordered in their favour. As the plaintiff submits, the impact may be reduced, at least to some extent, by the challenge being dealt with without delay.

[10] The plaintiff's counsel advises that the plaintiff has paid the money awarded by the Authority to its lawyer to be held on an interest-bearing account, with instructions to pay it out in line with the Authority's determination (together with interest) if the challenge fails. This step also goes some way to addressing the degree of impact on the defendant.

[11] The defendant submits that a payment into Court would more comprehensively deal with the concerns raised by the plaintiff in relation to repayment, in the event that the plaintiff succeeds on its challenge and if, having done so, the awards are set aside. I agree.

Will the stay have an impact on third parties?

[12] There is no suggestion that a stay would impact any third party; nor is there anything to suggest that declining to stay on enforcement would impact on any third

party (a factor I also consider relevant to the assessment exercise). This factor is neutral.

Are there any novel or important issues, and is there any public interest?

[13] There are no novel or important issues raised by these proceedings. No issues of broader public interest arise.

Are the merits of the plaintiff's challenge clear enough to be relevant?

[14] I do not understand the plaintiff to be submitting that the merits are sufficiently clear-cut to weigh in the analysis.⁹ The factor can be put to one side.

Balance of convenience and interests of justice

[15] There are factors that go both ways. The defendant succeeded in the Authority and has a right to the fruits of her success in that forum. The plaintiff has a statutory right to challenge the Authority's determination and has legitimate concerns about the defendant's financial position, which the defendant accepts. In the end I consider that the balance of convenience and the interests of justice favour the solution identified by the defendant, namely a payment into Court pending the outcome of the challenge.

Outcome

[16] The application for a stay of execution is granted on the following basis:

- (a) The plaintiff is to pay the amounts ordered by the Authority in the defendant's favour into Court within seven days of the date of this judgment.
- (b) The money is to be held by the Registrar on an interest-bearing account.
- (c) The plaintiff is to pursue its challenge diligently.

⁹ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [39].

- (d) If the amounts referred to in [16](a) are not paid into Court in full within the specified timeframe, the defendant is free to enforce the Authority's determination.

[17] Both parties have had a measure of success and therefore it is appropriate for costs to lie where they fall.

Christina Inglis
Chief Judge

Judgment signed at 10.30 am on 18 September 2025