

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

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

**[2025] NZEmpC 230
EMPC 54/2025**

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

AND IN THE MATTER OF an application for security for costs

BETWEEN MARIA AGUIRRE
 Plaintiff

AND KAH NEW ZEALAND LIMITED
 Defendant

Hearing: On the papers

Appearances: A Halse, advocate for plaintiff
 B Edwards, counsel for defendant

Judgment: 29 October 2025

**INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN
(Application for security for costs)**

[1] This judgment resolves an application by KAH New Zealand Ltd for an order that Ms Aguirre pay security for costs, and for a stay of proceedings until security for costs is paid.

[2] The grounds upon which the orders are sought are that Ms Aguirre is resident outside of New Zealand, in Spain, and that she is a full-time student, meaning she would likely have difficulties in paying the costs of KAH if her challenge is unsuccessful.

[3] KAH also says that Ms Aguirre’s challenge lacks merit and raises issues with the way in which she represented her employment with KAH.

[4] An affidavit in support of the application was filed by KAH, which provided the basis for KAH’s belief that Ms Aguirre is a full-time student and resident in Spain. KAH noted that the scale costs for defending Ms Aguirre’s claim, calculated on a 2B basis, would be approximately \$10,092.¹ It advised that it expected KAH’s actual costs to exceed that amount.

[5] Ms Aguirre filed a notice of opposition, but that did not set out any grounds for the opposition; it simply advised that Ms Aguirre opposed the application for security for costs and “seeks a waiver”.

[6] Timetabling directions were made on 22 May 2025, which allowed for Ms Aguirre to file affidavits in opposition to the application and for the parties to file submissions. No documents were filed in accordance with the timetable and the application was not progressed.

[7] However, it was not withdrawn, and in August 2025 a new timetable was set, again allowing for Ms Aguirre to file any affidavits in opposition to the application with submissions to follow.

[8] Although the Court registry has sent reminders, no affidavits have been filed by Ms Aguirre within the time allowed; KAH filed its submissions, but no submissions have been filed by Ms Aguirre. Ms Aguirre has not applied for an extension of time for any of the timetabling orders.

The Employment Court may order security for costs

[9] As there is no provision in the Employment Relations Act 2000 to order security for costs, the Court looks to the High Court Rules 2016.² Rule 5.45 of the High Court Rules provides that a judge who is satisfied that a plaintiff is resident out

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

² Employment Court Regulations 2000, reg 6(2)(a)(ii).

of New Zealand, or that there is reason to believe that a plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful in the plaintiff's proceeding, may, if the judge thinks it is just in all the circumstances, order the giving of security for costs.

There is a basis for an order

[10] I accept that Ms Aguirre is now resident in Spain, which provides grounds for ordering security for costs.³ I also accept that there is reason to believe she is a student. While that may impact on her financial position, that cannot be assumed to be the case.

[11] I note that the challenge has not proceeded in a timely fashion to date. It also is relevant that the challenge relates to a preliminary determination of the Authority so that if Ms Aguirre is successful in her challenge, the substantive proceedings would still need to be dealt with.⁴

[12] Although KAH has pointed to the merits of the challenge, it is difficult to assess those at this stage, and I put that issue to one side.

[13] While there are grounds for ordering security for costs, I am concerned that if the order for security for costs is set too high, that may prevent Ms Aguirre from pursuing her claim. On the other hand, if no security is ordered then KAH will be incurring legal costs with no assurance that they will be able to receive anything from Ms Aguirre should her claim not succeed, particularly because Ms Aguirre resides overseas. However, although I acknowledge the costs calculation on a category 2B basis, that may be a higher categorisation than ultimately is considered appropriate by the Court.

[14] Balancing the interests of both parties, I consider it is just in all the circumstances to make an order for security for costs, but at a modest level. I also consider that it is appropriate for Ms Aguirre to be given time to make arrangements to pay security for costs, but for the challenge to be stayed until payment is made.

³ High Court Rules, r 5.45(1)(a)(i).

⁴ *Aguirre v KAH New Zealand Limited* [2025] NZERA 25.

[15] Accordingly, the Court orders:

- (a) The amount of \$1,500 is to be paid to the Registrar of the Employment Court by Ms Aguirre no later than 4 pm on 14 November 2025.
- (b) The further amount of \$1,500 is to be paid to the Registrar by Ms Aguirre no later than 4 pm on 12 December 2025.
- (c) Those sums are to be held by the Registrar in an interest-bearing account pending further order of the Court.
- (d) The challenge by Ms Aguirre is stayed until full payment has been made or there is a further order of the Court.

[16] Costs in relation to this application are reserved.

J C Holden
Judge

Judgment signed at 10.45 am on Wednesday 29 October 2025