

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

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

**[2025] NZEmpC 245
EMPC 318/2025**

IN THE MATTER OF an application for leave to extend time to file
 a challenge to a determination of the
 Employment Relations Authority

BETWEEN MODERN AUTO REPAIR CENTRE
 LIMITED
 First Applicant

AND SATYA NAND SHARMA
 Second Applicant

AND SEKHENDRA NAIR
 Respondent

Hearing: On the papers

Appearances: S Sharma, applicant in person and agent on behalf Modern Auto
 Repair Centre Ltd
 R Morgan, advocate for respondent

Judgment: 13 November 2025

JUDGMENT OF JUDGE HELEN DOYLE

[1] This judgment resolves whether to grant Modern Auto Repair Centre Limited (Modern Auto) and Mr Sharma leave for an extension of time to challenge a substantive determination of the Employment Relations Authority (the Authority). The substantive determination was issued on 21 January 2025.¹ An application for leave to extend time to file a challenge was filed on 24 July 2025.

¹ *Nair v Modern Auto Repair Centre Ltd* [2025] NZERA 28.

[2] The Authority found in the substantive determination that there were wage and holiday pay arrears owing to Mr Nair and that Mr Nair was unjustifiably dismissed from his employment with Modern Auto.

[3] Mr Sharma, the sole director of Modern Auto, was found to be a person involved in the breach of employment standards under ss 142W and 142Y of the Employment Relations Act 2000 (the Act). The determination stated that Mr Sharma was personally liable for the wage arrears, annual leave arrears and interest awarded if Modern Auto is not able to pay those sums.

[4] A challenge to the costs determination was filed by Modern Auto and Mr Sharma on 18 March 2025.²

[5] Mr Sharma is the second applicant and an agent for Modern Auto. Mr Morgan is the advocate for Mr Nair.

[6] A telephone conference was held with the Court, Mr Sharma and Mr Morgan on 10 June 2025 to progress the challenge to the costs determination. The Court advised that it would delay the progression of the hearing to enable Mr Sharma to seek some legal advice. He was directed to update the registry within two weeks. The application for leave to extend time to file the challenge to the substantive determination was subsequently filed.

[7] The application for leave to extend time to file a challenge to the substantive determination is opposed by Mr Nair.

[8] During a further telephone directions conference on 12 September 2025 with the Court, Mr Sharma and Mr Morgan, it was agreed that the application for leave to extend time could be dealt with on the papers. The Court, in its Minute of 12 September 2025, advised the parties of the factors that were likely to be considered in determining the application for leave to extend time.

² *Nair v Modern Auto Repair Centre Limited* [2025] NZERA 144.

[9] A draft statement of claim was filed. Mr Sharma filed an affidavit in support of the application and a further affidavit appending exhibits. Submissions were provided on behalf of the parties.

The application for leave and opposition to leave

[10] The grounds relied on in the application for leave are that on 21 February 2025 Modern Auto and Mr Sharma proposed a settlement of all matters to Mr Nair with an amount to be paid in instalments. They say that Mr Nair delayed any response until after the period to challenge had expired and they were at that time without legal advice. Further, they say that there was confusion about which amount was required to be paid and why it was required to be paid.

[11] The draft statement of claim would seek to challenge the whole of the Authority's determination on a de novo basis. Modern Auto and Mr Sharma seek a full hearing of the entire matter.

[12] Mr Nair opposes the application on the basis that there is no good reason why the challenge was not filed within 28 days after the date of the determination. Further, he says that Modern Auto and Mr Sharma were represented at the time of the Authority investigation meeting.

Legal principles

[13] A party who is dissatisfied with a written determination of the Authority may elect to have the matter heard by the Court.

[14] An election must be made in the prescribed manner and within 28 days after the date of the determination.³

[15] The Court has jurisdiction to extend time for making an election under s 219(1) of the Act, which provides:

219 Validation of informal proceedings, etc

- (1) If anything which is required or authorised to be done by this Act is not done within the time allowed, or is done informally, the court, or the Authority, as the case may be, may in its discretion, on the

³ Employment Relations Act 2000, s 179(2).

application of any person interested, make an order extending the time within which the thing may be done, or validating the thing so informally done.

[16] The discretion in s 219 of the Act must be exercised judicially and in accordance with established principles.

[17] The Supreme Court in *Almond v Read* emphasised that the fundamental principle in exercising the discretion to extend time is the interests of justice.⁴ To assess this requirement, in the circumstances of this case, factors such as the length of delay, the reasons for the delay, the conduct of the parties, prejudice or hardship to the parties, the effect on the rights and liabilities of the parties and the merits need to be considered.

[18] The Supreme Court in *Almond* agreed with the Court of Appeal of England and Wales that the Court should only reach a view about the merits where they are obviously very strong or very weak.⁵ It was also stated that consideration of the merits in the context of a leave application would necessarily be superficial.⁶

The length of the delay and the reason for the delay

[19] The challenge to the substantive determination was required to have been filed by Modern Auto and Mr Sharma within 28 days after the date on which the determination was issued. The timeframe ended on 18 February 2025. The application to extend time was filed on 24 July 2025. That is a delay of slightly over five months.

[20] The Court of Appeal has described a delay of about three and a half months, which included the Christmas vacation, as being significant.⁷ The delay in this matter is longer. In *Almond* it was stated that the longer the delay the stronger the case for an extension will need to be.⁸

⁴ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38].

⁵ At [39](c), citing *R (on the application of Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633, [2015] 1 WLR 2472.

⁶ At [39].

⁷ *My Noodle Ltd v Queenstown Lakes District Council* [2009] NZCA 224, (2008) 19 PRNZ 518 at [21].

⁸ *Almond*, above n 4, at [38](a).

[21] Mr Sharma and Modern Auto were represented during the Authority investigation meeting by a lawyer, Mr Kashyap. There was communication in January and February 2025 after the issue of the substantive determination between Mr Kashyap and the advocate representing Mr Nair, Mr Morgan. Mr Morgan sent an email to Mr Kashyap on 28 January 2025 that Mr Nair would be willing to settle costs at \$4,500 plus GST payable within 14 days of an invoice being provided. The email was acknowledged by Mr Kashyap in an email of the same date, and he stated that he would talk to his client and revert to Mr Morgan. The Court was not provided with any response to Mr Morgan's proposal about costs on behalf of Mr Sharma and Modern Auto.

[22] There is limited information provided to the Court about why the challenge was not filed within the 28-day time limit for doing so. Mr Sharma says that the email from Mr Morgan about settling costs caused confusion about which amount was required to be paid. The confusion was whether the amount referred to for settling costs, or the amount in the 21 January 2025 determination, was required to be paid. There may have been some confusion, but Mr Kashyap was at that time providing some legal advice to Modern Auto and Mr Sharma, and that matter could have been clarified. Confusion over what was required to be paid does not adequately explain the delay in filing the challenge within the time limit for doing so.

[23] The next email that the Court was provided with is an email from Mr Morgan to Mr Kashyap on 20 February 2025 to the effect that Mr Nair had not received payment as ordered by the Authority in the substantive determination. Mr Sharma was copied into this email. A settlement proposal was then emailed on 21 February 2025 from Mr Kashyap, on behalf of Modern Auto and Mr Sharma, to Mr Morgan. Mr Morgan, on behalf of Mr Nair, declined the settlement proposal on 1 April 2025, which was several weeks after the proposal was initially provided.

[24] The settlement proposal was provided after the time limit for challenging the substantive determination had ended. Any delay in Mr Nair's response did not contribute to the failure to file the challenge within the 28-day time requirement under s 179 of the Act. This is not therefore an adequate explanation for the failure to file the challenge within the 28-day timeframe.

[25] Mr Sharma refers to several events occurring before the settlement proposal was declined that impacted on, and contributed to, the delay. He says that, when the costs determination was issued by the Authority on 7 March 2025, he was still trying to decide how to challenge the substantive determination. Mr Sharma states in his submission that there was confusion and a lack of knowledge about how to deal with the challenge, which took time and research.

[26] Mr Sharma and Modern Auto filed a challenge to the costs determination of the Authority within the timeframe for doing so on 18 March 2025.

[27] The address for service is that of Modern Auto. The statement of claim was expressed to be a challenge to the costs determination. The five paragraphs under particulars of the claim refer to broader matters but without sufficient clarity. Some may have been about aspects of the substantive or costs determinations.

[28] It is unclear when Modern Auto and Mr Sharma realised that they were outside of the time limit for challenging the substantive determination. If it was considered by them that the filing of the challenge to the costs determination on 18 March 2025 included a challenge to the substantive determination, then that view could only have been held until early April 2025. The statement of defence filed on 1 April 2025 made it very clear to Modern Auto and Mr Sharma that they were out of time for challenging the substantive determination and that only the costs determination could be challenged.

[29] The absence of legal advice after 1 April 2025 may have had an impact on Modern Auto and Mr Sharma about what to do to rectify the failure to file the challenge to the substantive determination within the required timeframe. However, the delay beyond that is more than a further three months, and this delay is not adequately explained.

[30] In *Almond* the Supreme Court stated that it is important when considering the reasons for delay to know if the delay resulted from a deliberate decision not to proceed followed by a change of mind, inadvertence, or error. There is some basis for inferring a change of mind in this matter with the decision to propose a settlement very shortly after the 28-day time limit expired. Where there has been a change of mind, it

was stated in *Almond* there is less justification for an extension than where the delay results from understandable error or inadvertence.⁹

[31] The two grounds provided by Modern Auto and Mr Sharma as to why the challenge was not filed within the 28-day time limit do not adequately explain the delay. Modern Auto and Mr Sharma had some legal advice at that time. The settlement proposal was made after the time limit had expired and was not therefore causative of the failure to file the challenge within time. The subsequent delay in rectifying the failure to file the application for leave is significant even if it is assessed from early April 2025, and it is not adequately explained.

The conduct of the parties

[32] Mr Morgan in submissions refers broadly to previous delays on the part of Modern Auto and Mr Sharma and says that the application is a tactical manoeuvre to avoid payment of the amounts in the substantive determination. Further, he argues that the application is an abuse of process. Modern Auto and Mr Sharma do not accept that criticism.

[33] The Court is not able to conclude that there has been conduct of a nature that could be relevant.

Prejudice or hardship

[34] Mr Morgan, on behalf of Mr Nair, broadly refers to the delay in his submissions. Further, he says that payment has not been made in accordance with the determination and a subsequent compliance order. The prejudice or hardship must arise from the delay and not from the filing of a challenge itself, which may in the ordinary course of events cause uncertainty and inconvenience. I do not conclude prejudice from the lack of payment. That may have arisen in any event.

[35] The delay in making this application was lengthy and did cause some prejudice to Mr Nair beyond that which may arise in the ordinary course of events from a

⁹ *Almond*, above n 4, at [38](b).

challenge. There was no clear notice to Mr Nair that the substantive determination was to be challenged for over five months and this has created uncertainty.

Effects on the rights and liabilities of the parties

[36] If the application is declined, then Modern Auto and Mr Sharma will be unable to challenge a determination that they are clearly dissatisfied with. Beyond that, there is no evidence of any effects on the rights and liabilities of the parties arising from the delay in bringing the challenge.

Merits

[37] The matters before the Authority were wage and holiday pay arrears claims and a grievance that Mr Nair had been unjustifiably dismissed. Mr Sharma set out in his affidavit some issues with the merits of the case and the findings of the Authority about these claims.

[38] As set out earlier, the Supreme Court made it clear in *Almond* that an assessment of the merits must necessarily be relatively superficial when deciding an application for leave.

[39] This is particularly so because if leave is granted there is an election to have a de novo hearing, in which the parties would have to present and establish their cases afresh. It is difficult in those circumstances to determine the merits of the challenge.

[40] It is not apparent to the Court on the information available that the merits are obviously very strong or very weak. It is unnecessary to refer to them further.

Overall justice

[41] The Court has considered where the overall justice lies considering the assessment of the factors set out above.

[42] The length of the delay in this matter is significant. No adequate explanation is offered for why the challenge could not have been filed within the 28-day time limit at a time when Modern Auto and Mr Sharma were represented. It could be inferred that the delay arose from a change of mind rather than error or inadvertence. There is

then another lengthy delay in filing the application for leave between 18 February 2025 and 24 July 2025.

[43] The Court has considered that Modern Auto and Mr Sharma were without legal advice after 1 April 2025 and the possibility of some genuine confusion as to the time limit at the time of filing the challenge to the costs determination. Nevertheless, there is still a lengthy delay between early April 2025 when any confusion was clarified by the statement of defence and 24 July 2025. The delay was lengthy enough to cause some prejudice to Mr Nair and is not adequately explained.

[44] The challenge to the costs determination can be progressed.

Application for leave declined

[45] I am not satisfied that it is appropriate to grant the application for an extension of time to challenge a substantive determination of the Authority.

[46] The application is therefore dismissed.

[47] Costs are reserved.

[48] If agreement is not possible then a memorandum should be filed.

Helen Doyle
Judge

Judgment signed at 12.15 pm on 13 November 2025