

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

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

**[2025] NZEmpC 249
EMPC 420/2025**

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

AND IN THE MATTER OF an application for an adjournment

BETWEEN ELIAS HUSSAIN
 Plaintiff

AND AUCKLAND TRANSPORT
 Defendant

Hearing: 26 November 2025
 (Heard by telephone)

Appearances: M W Ryan, counsel for plaintiff
 J MacGibbon, counsel for defendant

Judgment: 26 November 2025

**INTERLOCUTORY JUDGMENT OF JUDGE HELEN DOYLE
(Application for an adjournment)**

[1] These proceedings relate to a de novo challenge to an Employment Relations Authority (the Authority) determination declining Mr Hussain’s application for interim reinstatement.¹

[2] The Court hearing is scheduled for 28 November 2025. The plaintiff seeks an adjournment of the hearing. The defendant opposes the application for adjournment.

¹ *Hussain v Auckland Transport* [2025] NZERA 513.

[3] Mr Ryan, counsel for Mr Hussain, filed a memorandum on 25 November 2025 applying for an adjournment and setting out the reasons why. The main reason given is the defendant's delay in responding to the disclosure requests served on 12 and 17 November 2025. Counsel says that Mr Hussain is significantly prejudiced by the delay and the only remedy is to adjourn the hearing scheduled for 28 November 2025. He says that the only prejudice caused by an adjournment would be to the plaintiff.

[4] Auckland Transport, in a memorandum filed by its counsel Ms MacGibbon, opposed the adjournment primarily on the basis of unreasonable delay to date by Mr Hussain who has not been employed by Auckland Transport since May 2024.

[5] The Court held a telephone conference this morning with counsel so they could be heard before a decision on the application for adjournment.

[6] This judgment declines the application for adjournment and gives my reasons for doing so.

[7] The disclosure requests were made very late. The first request was on the same date as Mr Hussain's affidavit evidence was filed and served. The request for disclosure was not made in a reasonable manner to avoid an adjournment particularly when viewed with the significant delays to date. It did not give Auckland Transport a reasonable time to gather the information.

[8] The prejudice to Mr Hussain in continuing with the hearing needs to be considered with the nature of the hearing in mind. The Court is to hear an application for interim reinstatement. Whilst the disclosure sought could go to the strength of the arguable case for unjustified dismissal, the threshold is a low one. The affidavit evidence is untested. The affidavit evidence still to be provided by Mr Hussain is in reply to Auckland Transport's affidavit evidence. The nature of the hearing means that the possibility of any significant prejudice occurring from continuing with the interim reinstatement hearing is unlikely.

[9] Urgency has not been sought in respect of the application for interim reinstatement in the Authority or the Court. As at today's date it is 522 days since Mr Hussain was dismissed from his employment.

[10] Delays in the litigation caused by the plaintiff have been ongoing and consistent. There has been a history of Mr Hussain failing to comply with timetabled directions for filing affidavits both in the Authority and the Court. This has required, on several occasions, follow up from Auckland Transport.

[11] Dates for a substantive hearing have been offered twice by the Authority. The second dates were in late October or early November 2025. These dates were declined because Mr Ryan had other commitments. Mr Ryan indicated on today's telephone conference that new counsel would have to be instructed by Mr Hussain after the interim reinstatement hearing because of his other trial commitments.

[12] In the Court there was a failure to comply with the timetable to file affidavits in support of the application for interim reinstatement by no later than 4 pm on 31 October 2025. Mr Ryan then indicated that there may be a change of counsel for Mr Hussain but on 10 November 2025 he confirmed that he would continue to represent Mr Hussain. The timetabling was then amended. The reply affidavit evidence was to be filed in accordance with the amended timetable by 4 pm on 24 November 2025. It was not. The adjournment application then followed.

[13] Mr Ryan says that the only prejudice, if an adjournment was granted, would be to Mr Hussain. The defendant's prejudice, if any, can be addressed by an award of costs.

[14] Auckland Transport says that it has already suffered prejudice because of the delays to date and the costs incurred in responding to them. It would suffer further prejudice if the adjournment was granted. The Court is not satisfied that the prejudice that would be suffered by Auckland Transport could be appropriately addressed by an award of costs particularly in light of the history of delay.

[15] I am not satisfied that the interests of justice require that the hearing set for Friday 28 November 2025 be adjourned.

[16] The application for adjournment is declined. The hearing set down for 9.30 am on Friday 28 November 2025 is to proceed.

[17] A signed undertaking as to damages is to be filed by Mr Hussain before the hearing on 28 November 2025.

[18] If the two Authority affidavits are to be filed by Mr Hussain then they need to be filed with the Employment Court cover sheets in the normal manner.

[19] Costs are reserved.

Helen Doyle
Judge

Judgment signed at 4.30 pm on 26 November 2025