

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

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

**[2025] NZEmpC 40  
EMPC 140/2024**

IN THE MATTER OF proceedings removed from the  
Employment Relations Authority

AND IN THE MATTER OF an application for a witness to appear via  
Audio-Visual Link

BETWEEN JOE BAGRIE, MARK FORDER, IAN  
GLENISTER, WARREN LAWRENCE,  
TAMMY LUCA, CHRIS MEHLHOPT,  
MARK RITCHIE AND 26 OTHERS  
Plaintiffs

AND AIR NEW ZEALAND LIMITED  
Defendant

Hearing: On the papers

Appearances: C Parkhill and CM Evans, counsel for plaintiffs  
P Caisley and DE Thomson, counsel for defendant

Judgment: 13 March 2025

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**INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH  
(Application for a witness to appear via Audio-Visual Link)**

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[1] This proceeding is set down to be heard in Auckland for two weeks beginning on Monday 24 March 2025.

[2] The plaintiffs have now applied for its expert witness, Dr Aseem Malhotra, to give evidence from the United Kingdom by Audio-Visual Link (AVL).

[3] Included in the grounds of the application were that:

- (a) Dr Malhotra resides in London;
- (b) for Dr Malhotra to travel to New Zealand to attend the hearing would present difficulties for him given his work commitments and the extensive time and cost that would be incurred in that travel;
- (c) there is no detriment to the defendant in Dr Malhotra's evidence being given by AVL.

[4] The application is consented to by the defendant.

### **Analysis**

[5] The ordinary way for a witness to give evidence in a civil proceeding is orally in a courtroom in the presence of the Judge, parties and members of the public who choose to attend.<sup>1</sup> There is, however, no presumption that evidence must be given in this way.<sup>2</sup>

[6] The Courts (Remote Participation) Act 2010 provides for evidence to be given by AVL in civil proceedings.<sup>3</sup> The criteria to apply are those in s 5 of that Act. They include the nature of the proceeding, the availability and quality of the technology, and other practical matters such as the potential impact of the use of technology on the effective maintenance of the rights of the parties in the proceeding.

[7] There is nothing in the anticipated evidence to be given by Dr Malhotra, the nature of the hearing, or any other feature of the proceeding that suggests AVL would be unsuitable. Counsel has advised that Dr Malhotra has suitable technology available to him. There are no factors, so far as the Court is aware, that weigh against granting the application.

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<sup>1</sup> High Court Rules 2016, r 9.51; and Evidence Act 2006, s 83.

<sup>2</sup> *Wealleans v R* [2015] NZCA 353 at [34].

<sup>3</sup> Courts (Remote Participation) Act 2010, s 7(1).

## Outcome

[8] The application is granted. It is usual for a witness participating by AVL to complete a satisfactory test to ensure that the device or devices to be used, and the connection that is available, are adequate for the Court's purposes.<sup>4</sup> Counsel for the plaintiffs will need to ensure that this step is taken.

[9] Counsel for the plaintiffs will also need to ensure that copies of documents to be relied on in the course of the hearing are available for Dr Malhotra's use. Counsel must confirm that Dr Malhotra has been provided with a copy of the Court's "Summary of Guidelines for a Witness Giving Evidence by Audio-Visual Link Including in Virtual Hearings".<sup>5</sup>

[10] Costs are reserved.

K G Smith  
Judge

Judgment signed at 9.45 am on 13 March 2025

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<sup>4</sup> Employment Court of New Zealand "Guideline for Appearing by Audio-Visual Link, Including in Virtual Hearings" <[www.employmentcourt.govt.nz/what-to-expect/before-a-hearing/#AVL](http://www.employmentcourt.govt.nz/what-to-expect/before-a-hearing/#AVL)>.

<sup>5</sup> Employment Court of New Zealand "Summary of Guidelines for a Witness Giving Evidence by Audio-Visual Link Including in Virtual Hearings" <[www.employmentcourt.govt.nz/info-guidance/during-a-hearing/#evidence](http://www.employmentcourt.govt.nz/info-guidance/during-a-hearing/#evidence)>.