

- (a) \$15,000 in compensation under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act);
- (b) \$4,920 as wages for the period from 15 January to 9 February 2024;
- (c) \$8,200 as holiday pay for five weeks' annual leave; and
- (d) \$71.56 in reimbursement of the Authority's fee to lodge an application.

[3] In total, South Pole has been ordered to pay Mr Hao \$28,191.56 within 28 days of the date of issue of the Authority's determination, being on or before 2 June 2025.³

[4] On 26 May 2025, South Pole filed a *de novo* challenge to the Authority's determination.

[5] Mr Hao made repeated requests for South Pole to pay him the amount ordered by the Authority. Despite the requests, South Pole failed to pay the amount ordered on or before 2 June 2025.

[6] On 9 June 2025, South Pole filed an application seeking to stay the Authority's determination. It did not seek for the application to be dealt with as a matter of urgency. On 19 June 2025, Mr Hao filed a notice of opposition to the application for a stay.

[7] During the 23 July 2025 directions conference the Court's attention was drawn to the fact that Mr Hao had taken steps to enforce the Authority's determination in the District Court. A financial assessment hearing is scheduled to occur at the Waitakere District Court at 10.45 am on 26 August 2025.

[8] Given the advanced stage of the enforcement proceedings, the Court timetabled an urgent hearing of the application.

³ *Hao*, above n 1, at [69].

Legal framework

[9] A challenge does not operate as a stay of proceedings on a determination of the Authority.⁴ That reflects the principle that a successful litigant is ordinarily entitled to the fruits of their success.⁵ 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.⁶ The challenging party must satisfy the Court that adequate grounds have been made out.⁷ 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.⁸

[10] In determining whether a stay ought to be granted, the Court must balance the interests of the parties and generally have regard to the following non-exhaustive list of factors:⁹

- (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;

⁴ Employment Relations Act 2000, s 180.

⁵ *Duncan v Osborne Building Ltd* (1992) 6 PRNZ 85 (CA) at 87.

⁶ Employment Court Regulations 2000, reg 64.

⁷ *Grove v Archibald* [1998] 2 ERNZ 125 (EmpC) at 128–129.

⁸ *Bathurst Resources Ltd v L&M Coal Holdings Ltd* [2020] NZCA 186, (2020) 25 PRNZ 341 at [19].

⁹ *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).

(f) the public interest in the proceeding; and

(g) the overall balance of convenience.

[11] Other factors, including the likely merits of any related challenge, can also be relevant.¹⁰ Ultimately, the overarching consideration is the interests of justice.

Affidavits have been filed

[12] On 25 July 2025 South Pole filed an affidavit from its director, Mr Wu. He gave evidence of the poor financial position of the company and his concern that it may run into financial difficulties if it is required to pay the amounts ordered by the Authority. His evidence is that if a stay is not granted, “there is a real possibility that the result will put the company into insolvency”. Mr Wu’s evidence is that it “would be more convenient for [sic] to delay the enforcement of the costs award so as to allow me more time to raise funds.”

[13] Mr Wu’s evidence is that South Pole operates two bank accounts and he has produced electronic bank statements for these two accounts for the period 4 July to 24 July 2025. The statements show that the collective balances for these accounts as at 24 July 2025, totalling \$12,750.48, is insufficient to meet the amounts awarded by the Authority.

[14] Mr Hao’s evidence is that while he is currently employed, his financial position is vulnerable. He is the sole income earner for his household, which consists of his wife and three dependent children. He has waited months for the outcome of his personal grievance and the Authority proceedings. He considers the amounts ordered by the Authority represent essential income for him and his family. Due to financial constraints, he has been unable to hire a legal representative to represent himself.

[15] Mr Hao disputes that the financial evidence provided by South Pole shows evidence of insolvency. He observes that there is no evidence of creditor pressure, or the company having to resort to obtaining an overdraft to pay its debts. He points out

¹⁰ *Broadspectrum (NZ) Ltd v Nathan* [2017] NZCA 434, [2017] ERNZ 733 at [34].

that South Pole has failed to produce bank account statements for the period of his employment to the present or annual financial reports for the same period. Mr Hao considered that without this information, the Court could not genuinely or accurately assess the financial position of the company. Lastly, Mr Hao points out that South Pole is the sole shareholder of three other companies for which Mr Wu is also a director. Mr Hao considers that this shareholding is relevant to the assessment of South Pole's financial position.

[16] On 8 August 2025, Mr Wu on behalf of South Pole, filed a brief affidavit in reply where he produced electronic screenshots from an online banking website of the two bank accounts the company operates. The screenshots show the collective balances for these accounts as at 6 August 2025 totalling \$848.58. The screenshots do not display any transactions, it simply shows the bank account details (bank account name and number) and the balance held by each account at that point in time. Mr Wu's evidence is that the bank account balances were reduced after the payment of staff payroll on 4 August 2025. He goes on to state "I may have to finance more funds to pay off on-going expenses."

[17] Mr Wu did not respond to Mr Hao's criticism of the financial evidence South Pole had previously filed. He did not provide the financial evidence sought by Mr Hao and he did not respond to the concerns raised about South Pole's shareholding in the three other companies Mr Hao had identified.

Submissions have been filed

[18] South Pole submitted that its challenge would be rendered nugatory if a stay was not granted. It is submitted that if South Pole paid the amounts awarded in the Authority and its challenge was then successful, it is unlikely that it would be able to recover any amounts paid to Mr Hao. Its submission relies on Mr Hao's evidence that he is under significant financial strain. South Pole further submits that the merits of its case are strong, it is pursuing its claim in good faith, and it does not accept that Mr Hao will be injuriously affected by the Court granting a stay.

[19] Mr Hao submits that he will be injuriously affected if a stay is granted. His evidence is that his financial position is difficult in part because of South Pole's actions. He has waited many months to have his personal grievance against South Pole heard by the Authority and remedies awarded in his favour. If a stay is granted it will further delay him from receiving the fruits of his success in the Authority. Mr Hao also disputes that South Pole's challenge has been brought for good reasons and is being pursued in good faith. Lastly, Mr Hao submits that the evidence provided by South Pole is insufficient to support its claims that it would be insolvent or unable to pay the amounts ordered by the Authority. He points to South Pole being able to afford legal representation and to pay its staff payroll without going into debt.

Analysis

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

[20] South Pole says that if the Authority's orders against it are not stayed, its ability to continue pursuing its challenge is put at risk. However, it has failed to provide the Court with sufficient evidence of its financial position to support that submission. It has failed to produce any audited financial accounts disclosing its annual income and any assets, including the value of its shareholding, the value of any property, plant, or machinery it owns. It does not disclose the value of its operating expenses, debts, or provide any reason why it could not obtain finance or lending to meet the orders of the Authority, pending the outcome of its challenge. The evidence South Pole has provided to the Court is incomplete and does not satisfy the Court that a stay is required to protect its challenge rights, or otherwise protect its interest.

[21] I do not accept that it is established that the challenge will be rendered ineffectual if a stay is not granted. South Pole has not established that it is, or is likely to be, a forgone conclusion that Mr Hao will be unable to repay any monies found to be repayable as a result of the challenge. While Mr Hao's financial position is difficult, he is nevertheless in current employment. He is aware that South Pole is seeking a reversal in the Court of the orders made in the Authority and has submitted that he would repay any monies if ordered to do so by the Court.

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

[22] In this regard, Mr Hao has raised concerns over South Pole's failure to pay his wages during his employment, its failure to produce payslips and respond to his personal grievance letters or letters of demand. However, the majority of the matters he has raised form part of his personal grievance for which the Authority made findings or relate to his enforcement of the Authority's orders which are being addressed in these proceedings. I am not satisfied that there is any evidence or submissions that indicates South Pole's challenge is not brought for good reasons or not being pursued in good faith.

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

[23] A stay will delay Mr Hao from receiving the fruits of his success in the Authority. I accept the evidence that Mr Hao is out of pocket in respect of the amounts ordered by the Authority and that this impacts him.

Impact on third parties, novel or important issues, and public interest

[24] There is no suggestion that there are any issues impacting third-party interests, that the challenge would raise any novel or important issues, or that any issues of public interest arise.

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

[25] It is generally difficult to assess the merits of a challenge at an interlocutory stage, particularly where a de novo challenge has been filed.¹¹ That observation is true of the present challenge which has not yet been heard.

Balance of convenience/interests of justice

[26] Turning to consider the balance of convenience, on balance I am not satisfied that South Pole has established a basis for a stay. Mr Hao is entitled to the use of all

¹¹ Although dealing with an application to bring an appeal out of time, the Supreme Court made helpful observations about the necessarily superficial nature of any consideration of the merits of cases at an interlocutory stage in *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [39].

monies currently due to him, knowing he may need to repay them if the challenge succeeds.

[27] Accordingly, I consider that the balance of convenience and the interests of justice do not favour the granting of a stay.

Outcome

[28] The application for a stay is declined.

[29] Mr Hao is free to continue to enforce the Authority's determination.

[30] Mr Hao is entitled to costs, and the parties are encouraged to agree. However, if the parties are unable to agree on the issue, Mr Hao will have 14 days from the date of this judgment within which to file and serve any memorandum and supporting material, with South Pole having a further 14 days within which to respond. Any reply should be filed by Mr Hao within a further seven days.

M S King
Judge

Judgment signed at 12.15 pm on 13 August 2025