



Employment Court of New Zealand

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Alkazaz v Enterprise IT Limited [2020] NZEmpC 143 (7 September 2020)

Last Updated: 12 September 2020

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2020\] NZEmpC 143](#)

EMPC 397/2019

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for a stay of proceedings
BETWEEN	AHMED ALKAZAZ Plaintiff
AND	ENTERPRISE IT LIMITED Defendant

Hearing: 7 September 2020
(Heard at Auckland by telephone)

Appearances: Plaintiff in person
M McGoldrick and R Bryant, counsel for defendant

Judgment: 7 September 2020

INTERLOCUTORY JUDGMENT (NO 4) OF CHIEF JUDGE CHRISTINA INGLIS

(Application for a stay of proceedings)

[1] Mr AlKazaz applies for a stay of his challenge to a determination of the Employment Relations Authority¹ pending an application for leave to appeal the Court's interlocutory judgment declining his application to set aside witness summonses.² The application is firmly opposed by Enterprise IT Limited.

[2] The challenge is set down for a two-day hearing commencing tomorrow, 8 September 2020. As [s 214\(6\)](#) of the [Employment Relations Act 2000](#) (the Act)

¹ *AlKazaz v Enterprise IT Ltd* [\[2019\] NZERA 560](#) (Member Craig).

² *AlKazaz v Enterprise IT Ltd* [\[2020\] NZEmpC 138](#).

AHMED ALKAZAZ v ENTERPRISE IT LIMITED [\[2020\] NZEmpC 143](#) [7 September 2020]

makes clear, an application for leave to appeal does not operate as a stay unless the Employment Court or the Court of Appeal so orders. I convened an urgent telephone hearing of the stay application this morning, and heard from both parties. At the conclusion of the hearing I dismissed the application and said that my reasons would follow. These are my reasons.

[3] In considering an application of this sort, the Court is ultimately guided by the interests of justice. The factors generally considered relevant are well established. They include:³

- (a) If no stay is granted, whether the right to appeal will be rendered ineffectual;
- (b) whether the company will be affected injuriously by a stay;
- (c) whether the appeal is being pursued in good faith; and
- (d) the novelty and importance of the questions involved in the case.

[4] I deal with each of these factors in turn.

[5] I accept that Mr AlKazaz believes that the presence of the seven proposed witnesses is necessary to enable him to effectively pursue his challenge to the Authority's determination refusing to reopen its earlier investigation into his grievances. The point is, however, that Mr AlKazaz's appeal rights will not be lost, whether or not a stay is granted.

[6] The company is essentially running out of patience in terms of responding to matters raised by Mr AlKazaz and wishes to bring this litigation to an end. That is understandable. Further, the company has prepared for the hearing and would

3. *New Zealand Post Primary Teachers' Assoc v Attorney-General (on behalf of Ministry of Education) (No 3)* [1991] NZEmpC 89; [1991] 3 ERNZ 708 (EmpC) at 709. See also *Z v Attorney-General EmpC Wellington WRC 33/02*, 22 July 2003 at [9].

inevitably incur wasted costs if a stay were granted at this late stage. I accept too that there would be delays associated with waiting for the outcome of the application for leave to appeal and, if granted, the outcome of the appeal itself. If stayed, it is highly unlikely that the challenge would come back before this Court for hearing until well into next year. Such a delay is undesirable, particularly given that the challenge relates to a rehearing decision.

[7] I accept that Mr AlKazaz is pursuing an appeal in good faith and that he believes there are compelling reasons for doing so.

[8] Mr AlKazaz makes the valid point that staying the challenge pending the outcome of the Court of Appeal process may ultimately be the more efficient option, particularly if (as he says is likely) that Court agrees to hear his appeal and upholds it. However, these perceived efficiencies need to be weighed against other matters, including the likely merits of the application for leave, which I turn to next.

[9] There are a number of hurdles which Mr AlKazaz will need to overcome in pursuing his appeal. The first is persuading the Court of Appeal that it should grant leave, given the nature of the orders which he wishes to appeal. They are not the sort of orders which the Court of Appeal usually intervenes in. Second, Mr AlKazaz wishes to advance an appeal to secure the opportunity to cross-examine the seven summonsed witnesses. Even if leave is granted, the Court of Appeal sets aside the Employment Court's orders, and the seven witnesses are called to give evidence, it does not follow that they would be declared hostile, providing a route via which Mr AlKazaz could cross-examine each of them. And while he says he was not aware that he would not be able to cross-examine them absent an order declaring each of them hostile, and that appears to be the basis on which he seeks leave, this overlooks the more fundamental point that the witness summonses were set aside on other grounds. It is the correctness or otherwise of the setting aside which will be the focus of the Court of Appeal in the event that it grants leave to appeal.

[10] There are no novel or important issues of law involved in this case, or any matters of public interest.

[11] It is important that these proceedings be dealt with and not unnecessarily delayed. They have been on foot for some time and it is not in the broader interests of justice that they be derailed at this point. Mr AlKazaz will remain able to pursue his application for leave to appeal against my orders setting aside the witness summonses and, depending on the outcome, he will be able to apply for leave to appeal against the judgment of the Court on the substantive challenge.

[12] The overall balance of convenience also leads to the conclusion that the application for a stay should be declined.

[13] The application for a stay was accordingly declined.

[14] Costs are reserved.

Christina Inglis Chief Judge

Judgment signed at 11.30 am on 7 September 2020