



Employment Court of New Zealand

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Allison v Ceres New Zealand LLC [2021] NZEmpC 27 (12 March 2021)

Last Updated: 18 March 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

[\[2021\] NZEmpC 27](#)

EMPC 218/2020

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER	of an application for evidence to be heard by audio visual link
BETWEEN	DAVID ALLISON Plaintiff
AND	CERES NEW ZEALAND LLC Defendant

Hearing: On the papers

Appearances: A Oberndorfer, advocate for
plaintiff S Townsend, counsel for
defendant

Judgment: 12 March 2021

INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH

(Application for evidence to be heard by audio visual link)

[1] In a determination dated 2 July 2020 the Employment Relations Authority dismissed all of the claims by David Allison against his former employer Ceres New Zealand LLC.¹

[2] Mr Allison had lodged a claim in the Authority for unjustifiably dismissed, unjustifiably disadvantaged, and a breach of good faith towards him arising from the circumstances in which his employment was ended for redundancy. Mr Allison

¹ *Allison v Ceres New Zealand LLC* [\[2020\] NZERA 267](#) (Member Doyle).

DAVID ALLISON v CERES NEW ZEALAND LLC [\[2021\] NZEmpC 27](#) [12 March 2021]

challenged the Authority's determination and the case is to be heard in Christchurch on 28 April 2021.

[3] Ceres has applied for an order authorising it to present the evidence of its director, and sole shareholder, David McIntyre by audio visual link. It is a company incorporated in the United States of America, and was registered in New Zealand under the [Companies Act 1993](#), in June 2011.

[4] The basis for this application is that Mr McIntyre is resident in the USA and, due to the current pandemic, there are significant hurdles that would need to be overcome for him to attend the hearing in person. Those difficulties include problems over international travel and the requirement to quarantine on arrival in New Zealand.

[5] The plaintiff does not oppose this application.

[6] The [Courts \(Remote Participation\) Act 2010](#) provides for evidence to be able to be given by AVL in civil proceedings. The criteria to apply is in [s 5](#) of that Act and includes the nature of the proceeding, the availability and quality of the technology, and other practical matters such as the potential impact on the use of technology on the effective maintenance of the rights of the parties to the proceeding.

[7] Ceres has satisfied the criteria in [s 5](#) and it is appropriate for Mr McIntyre's evidence to be given by AVL. In particular, there has been an acknowledgement by Ceres that the differences in time zone between New Zealand and the USA will be accommodated by Mr McIntyre making himself available at times convenient to the Court regardless of the time of the day in the USA.

[8] The application is granted subject to:

- (a) Ceres complying with the conditions in Schedule 1; and
- (b) Cere's forthwith supplying a copy of Schedule 2 to this judgment to Mr McIntyre.

[9] Costs are reserved.

K G Smith Judge

Judgment signed at 3.30 pm on 12 March 2021

Schedule 1

- a. All costs associated with establishing and maintaining the AVL are to be met by Ceres (this issue may be revisited at the completion of the case).
- b. The technology used to establish an AVL must be reliable and compatible with the systems provided by the Ministry of Justice.
- c. Mr McIntyre is to be supplied with his brief of evidence prior to the AVL connection being made.
- d. Mr McIntyre is to have available to him copies of all documents that he may be referred to, including the briefs of other witnesses, and they must be numbered or otherwise identified in the same manner as they appear in the common bundle of documents.
- e. The location from which Mr McIntyre gives evidence must be private, quiet, free from unnecessary interruption and there must be no restrictions his use of that location.
- f. If his evidence is to be sworn then a Bible must be available so that suitable oath can be taken.
- g. Mr McIntyre is not to use, or have turned on while giving evidence, any other device aside from the one necessary for the AVL connection (and this includes a mobile phone).
- h. The camera used to provide the AVL connection must be placed in a position that properly captures a reasonable and fair image of Mr McIntyre while he is giving evidence.
- i. At least two tests of the AVL equipment are to be conducted, under the supervision of the Registrar of this Court, before Mr McIntyre is to give evidence. Any adjustments, corrections or changes required by the Registrar must be undertaken.
- j. Ceres is responsible for ensuring that any document provided to Mr McIntyre is secured by it, and retained, at the conclusion of the hearing.

Schedule 2

SUMMARY OF GUIDELINES FOR A WITNESS GIVING EVIDENCE BY AUDIO VISUAL LINK

The Court has granted an application for your evidence to be given by Audio Visual Link (AVL). This is a summary of the Court's AVL guideline to assist your participation in the hearing.

Please remember that while you will not be in the courtroom you are still appearing in Court. That means you must comply with all of the orders given by the Judge and the usual standards of behaviour and courtesy apply.

What you must have

- If your evidence is to be given by reading from a brief of evidence prepared by you, you must have the latest version of that evidence with you.
- You must have copies of all documents you will refer to in your evidence.

The party calling you to give evidence is responsible for making sure you have your evidence and any documents to be referred to.

Punctual attendance

Your evidence is to be heard at a time scheduled by the Court. To avoid unnecessary delays you must be present at the AVL site 15 minutes before the scheduled time.

What you must do

- stand while the Judge enters or leaves the courtroom and until directed to do otherwise;
- stand while you take an oath or affirmation; and
- during the presentation of your evidence speak slowly and clearly because the audio part of the transmission is being recorded (the Court will not record visual images).

What you must not do

- You must not use any device such as a smart phone, tablet, iPad, or laptop while giving evidence. If you need to have any of those devices with you for use before or after giving evidence they must be switched off. You may operate the AVL equipment, if required.
- You must not mark any document supplied to you for the purpose of giving evidence unless directed to do so by the Judge.
- You must not record the proceeding.
- You must not eat food or drink, except water, during the AVL.

Other information

It is possible the Court will give special instructions about your evidence. You should expect to receive information from the party calling you as a witness about any special instructions that apply. Please ensure you are familiar with them.

If you have any special need the Court should be aware of, such as a hearing impairment, please draw it to the attention of Court staff before your evidence is given.

Technical problems

If there is a technical problem during the presentation of your evidence, for example if you cannot hear, or see, the Judge or other parties, you must attempt to draw that problem to the attention of the Court immediately.

Departure

You are free to leave once your evidence is completed and the Judge directs that the AVL is to be disconnected.

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URL: <http://www.nzlii.org/nz/cases/NZEmpC/2021/27.html>