



Employment Court of New Zealand

You are here: [NZLII](#) >> [Databases](#) >> [Employment Court of New Zealand](#) >> [2018](#) >> [\[2018\] NZEmpC 80](#)

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

Avondale Collegw Board of Trustees v Maday [2018] NZEmpC 80 (17 July 2018)

Last Updated: 20 July 2018

IN THE EMPLOYMENT COURT
AUCKLAND

[\[2018\] NZEmpC 80](#)
EMPC 149/2018

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 AVONDALE COLLEGE BOARD OF
 TRUSTEES
 Plaintiff
AND CATRIONA MADAY
 Defendant

Hearing: (on the papers filed on 19 June and 3 July
 2018)
Representation: P Pa'u, advocate for plaintiff
 R L White, counsel for defendant
Judgment: 17 July 2018

INTERLOCUTORY JUDGMENT OF JUDGE B A CORKILL: APPLICATION FOR A STAY OF PROCEEDINGS

[1] Avondale College Board of Trustees (the Board) has challenged a determination of the Employment Relations Authority (the Authority) which ordered it to pay a total of \$50,000 as compensation under [s 123\(1\)\(c\)\(i\)](#) of the [Employment Relations Act 2000](#) (the Act), being \$25,000 for each of two established grievances, to Mrs Catriona Maday.¹

[2] Mrs Maday also sought lost wages as a consequence of dismissal. The Authority directed the representatives to confer on issues pertaining to that claim, and indicated that on receipt of the information which was requested, it would issue a

¹ *Maday v Avondale College Board of Trustees* [2018] NZERA Auckland 131.

AVONDALE COLLEGE BOARD OF TRUSTEES v CATRIONA MADAY NZEmpC AUCKLAND [\[2018\] NZEmpC 80](#) [17 July 2018]

further determination on this aspect.² On the material before the Court, the provision of the necessary information to the Authority has yet to occur.

[3] The Board has filed an application for a stay of proceedings, but the orders sought are in effect that there be a stay of execution relating to the sum of \$50,000 to be paid to Mrs Maday, and that this sum be paid into Court until further order.

[4] Comprehensive affidavits have been filed on behalf of the Board outlining the grounds upon which the stay is sought. In summary, it is asserted that:

- a. there would be no prejudice to Mrs Maday if the order of stay were granted, but prejudice to the Board if it was not;
- b. there are meritorious grounds of challenge; and
- c. that the balance of convenience and interests of justice favour the grant of the order.

[5] Counsel for Mrs Maday, Ms White, has filed a memorandum stating that the parties have been working towards what is described as a “consent position”. She stated that she had informed the representative for the Board that Mrs Maday’s position as to a stay would be confirmed once the Authority had issued its determination in relation to her lost wages’ claim. In the meantime, no steps had been taken on her behalf to enforce the orders of the Authority. She submitted it was unclear why the Board had gone to the effort of filing the present application in these circumstances.

[6] However, Ms White also confirmed that Mrs Maday does not oppose the order sought, providing the subject funds are paid into Court and held in an interest-bearing account.

[7] She also stated that the various assertions made in the supporting affidavits as to the merits of the intended challenge are not accepted. That said, no notice of opposition has been filed.

2 At [227].

[8] Although an outright consent to the order which is sought has not been given on behalf of Mrs Maday, it is apparent from the material before the Court that there is no real controversy on the topic: it is common ground that such an order may be made subject to a direction that the funds be paid into Court.

[9] I am satisfied that the application is appropriate in the circumstances, when considered against the applicable principles.³ I find the challenge is brought on a bona fide basis – though I express no view as to the merits. A consideration of other orthodox factors supports the granting of the order. I agree that a balancing of the parties’ rights on the issue of stay can be met by payment of the sum in question into Court.

[10] The only real issue between the parties relates to timing. Should an order be made now; or should it be made after the Authority has issued its determination as to lost wages?

[11] In my view, there is no reason why the orders should not be made now so that interest is running on the sum paid into Court. I do not consider it necessary to wait until the wages issue has been resolved by the Authority. If need be, a further application for stay of any order for lost wages, or any other order the Authority may make, can be made and considered in the event that the Board challenges the subsequent determination.

[12] The correct order is one of stay of execution, rather than a stay of the proceedings in the Authority which are of course still on foot.

[13] Accordingly, I order that there is to be a stay of execution of the order made by the Authority, by which the Board was directed to pay \$50,000 to Mrs Maday, on condition that such sum is paid to the Registrar of the Employment Court at Auckland within seven days. Thereafter it will be held in an interest-bearing account, until disbursed by order of this Court.

3. These are well known and were summarised, for example, in *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50; and *Dymoocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* [1999] NZHC 1324; [1999] 3 NZLR 239 (HC).

[14] Costs are reserved.

B A Corkill Judge

Judgment signed at 4.30 pm on 17 July 2018