



Employment Court of New Zealand

You are here: [NZLII](#) >> [Databases](#) >> [Employment Court of New Zealand](#) >> [2020](#) >> [\[2020\] NZEmpC 148](#)

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

Baker v Hauraki Rail Trail Limited [2020] NZEmpC 148 (17 September 2020)

Last Updated: 22 September 2020

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2020\] NZEmpC 148](#)

EMPC 487/2019

IN THE MATTER OF	challenges to determinations of the Employment Relations Authority
BETWEEN	CAROL SUSANNE BAKER Plaintiff
AND	HAURAKI RAIL TRAIL LIMITED First Defendant
AND	PETER FOSTER MAYNARD Second Defendant

Hearing: 11 August 2020 (Heard at
Auckland)

Appearances: C Baker, plaintiff in person
No appearance for
defendants

Judgment: 17 September 2020

JUDGMENT OF JUDGE M E PERKINS

Introduction

[1] These proceedings involve non-de novo challenges to two determinations of the Employment Relations Authority (the Authority) dated 27 November 2019¹ and 24 April 2020.² The second determination dealt with the issue of costs.

1 *Baker v Hauraki Rail Trail Ltd* [\[2019\] NZERA 679](#) (substantive) (Member Trotman).

2 *Baker v Hauraki Rail Trail Ltd* [\[2020\] NZERA 164](#) (costs).

CAROL SUSANNE BAKER v HAURAKI RAIL TRAIL LIMITED [\[2020\] NZEmpC 148](#) [17 September 2020]

Background

[2] This matter has an extensive history following the filing of a statement of problem by Ms Baker in the Authority on 10 July 2013. Ms Baker alleged that she had been unjustifiably dismissed from her employment with the first defendant, Hauraki Rail Trail Ltd. She had been assaulted by the manager of the company, Peter Maynard, who is the second defendant in these proceedings. Mr Maynard was subsequently charged with assault and convicted by verdict of a jury.

[3] Ms Baker's personal grievance proceedings were based on claims of being unjustifiably dismissed or in the alternative, constructively dismissed. Claims for unjustifiable disadvantage in her employment were also made. The proceedings did not come before the Authority for an investigation meeting until 13 August 2015. That investigation meeting had been preceded

by the criminal proceedings and also proceedings in the Family Court; Ms Baker and Mr Maynard having previously lived together.

[4] The personal grievance proceedings, which were the subject of the investigation meeting on 13 August 2015, resulted in a determination of the Authority dated 26 August 2015.³ In that determination Ms Baker was successful in her claim to have been unjustifiably dismissed. The Authority ordered the first defendant, Hauraki Rail Trail Ltd, to pay her the sum of \$17,500 as compensation pursuant to [s 123\(1\)\(c\)\(i\)](#) of the [Employment Relations Act 2000](#) (the Act). In addition, the first defendant was ordered to pay Ms Baker the sum of \$71.56 being the filing fee. She was not successful in her claim for lost wages. The first defendant was also ordered to make a contribution towards Ms Baker's costs of \$1,750. The determination noted that Ms Baker was in receipt of legal aid at the time.

[5] It appears that attempts were made to enforce the determination against Hauraki Rail Trail Ltd without success. There is evidence that the directors of the company, Maurice Barnett and Mr Maynard, may have defeated Ms Baker's chances of effecting enforcement by their disposing of the company's assets.

³ *Baker v Hauraki Rail Trail Ltd* [2015] NZERA Auckland 259 (Member Crichton).

[6] In August 2017 Ms Baker applied to the Authority to reopen its investigation and to join the directors of Hauraki Rail Trail Ltd as parties to the proceedings. At the same time, she also requested the Authority to investigate and increase the level of compensation that had been awarded to her in the earlier determination. This application was investigated on the papers and a determination was issued on 22 August 2018. That determination resulted in an order that the investigation be re-opened.⁴ On the question of whether the directors of the company, Mr Barnett and Mr Maynard, be joined, the determination found that it was not necessary to join either of them to the proceeding although the right to reconsider that in the future was reserved. The Authority indicated that it then intended to proceed with the re-opened investigation. The Authority also indicated that it would be interviewing Mr Barnett and Mr Maynard as part of its investigation.

The challenge to the 2018 determination

[7] The next step in the sequence of events was that, before the Authority could reopen the investigation, Ms Baker challenged that part of the 2018 determination which decided that it was not necessary to join either Mr Barnett or Mr Maynard to the proceeding. Pending hearing of that challenge the Authority did not proceed further with the investigation it had decided to reopen. In the challenge Ms Baker was represented by an advocate Alan Halse. Mr Halse had represented Ms Baker before the Authority when it conducted its investigation meetings in 2015 and 2018.

[8] The challenge proceeded as a formal proof hearing in view of the fact that Hauraki Rail Trail Ltd, Mr Barnett and Mr Maynard, who were joined as defendants in the challenge, took no steps to defend the claim. On the day of the hearing of the challenge, all three defendants were called, as they had been notified of the hearing date. None of them appeared. The challenge obviously involved some legal issues relating to the issue of joinder. Ms Baker gave evidence. At the conclusion of her evidence I asked her advocate, Mr Halse, to address me on the legal issues. He replied that as he was not a lawyer, he was unable to address me and did not present any submissions in support of the challenge or the application made as part of it to join Mr

⁴ *Baker v Hauraki Rail Trail Ltd* [2018] NZERA Auckland 266.

Barnett and Mr Maynard as parties to the Authority proceedings. Mr Halse had clearly advised Ms Baker to bring the challenge. It never had any prospect of success for the reasons expressed in the Court's judgment dated 17 October 2019.⁵ I commented in the judgment upon some further aspects, including the way the case was pleaded, and prospect of some action in the High Court. I indicated that Ms Baker should obtain sound legal advice. Certainly the challenge was unnecessary. It simply delayed the investigation of the Authority which had agreed to reopen the earlier investigation into Ms Baker's remedies. This delay would have resulted also in Ms Baker incurring wasted costs.

The re-opened investigation

[9] Following the Court's judgment dismissing the challenge, the re-opened investigation of the Authority proceeded. Mr Halse represented Ms Baker. Hauraki Rail Trail Ltd, which was the first respondent before the Authority, was represented by Mr Barnett. Mr Maynard, who was second respondent, appeared in person. I mention as an aside that as part of the pursuit of the claims against Hauraki Rail Trail Ltd, Ms Baker had, in March 2016, obtained an order from the High Court pursuant to [s 321\(1\)\(d\)](#) of the [Companies Act 1993](#), that the company was not to be removed from the Companies Register.

[10] Following the re-opened investigation on 22 November 2019, the Authority issued a determination dated 27 November 2019.⁶ It is that determination, along with the subsequent determination on costs dated 24 April 2020, which are the subject of the present challenge.

[11] At the re-opened investigation meeting the Authority dealt with four issues:

(a) Whether the level of compensation in the 2015 determination should be increased.

5 *Baker v Hauraki Rail Trail Ltd* [2019] NZEmpC 147.

6 *Baker v Hauraki Rail Trail Ltd*, above n 1.

(b) Whether in 2015, Mr Maynard obstructed or delayed the Authority's investigation without sufficient cause.

(c) Whether a penalty should be imposed upon Mr Maynard.

(d) Whether Mr Maynard's behaviour described in the 2015 determination amounted to contempt of court.

[12] The Authority held that Ms Baker had not made a case, based on further evidence presented, that the level of compensation awarded should be increased. Ms Baker had relied upon two matters which she considered had not been taken into account in the 2015 determination. The first was a death threat she alleged Mr Maynard had made to her. The second was an alleged assault on her by Mr Barnett. The Authority Member (Member Trotman), dealing with the re-opened investigation, found that Member Crichton, who had issued the 2015 determination, was aware of the death threat because he referred to it in his determination and took account of the consequences of it upon Ms Baker. In respect of the alleged assault by Mr Barnett, Member Trotman found that Member Crichton was unaware of it. She also found that the evidence was insufficient to prove the assault had occurred but in any event, there was no evidence of the impact upon Ms Baker if the assault had occurred. Member Trotman found that the earlier determination had taken into account the consequences of the dismissal on Ms Baker, that the award of compensation was at the high end of awards made at the time, and that an increase was not justified. Any distress caused to Ms Baker arising from her inability to recover the debts was subsequent to the end of the employment relationship and therefore not recoverable.

[13] On the other issues, the Authority found Mr Maynard, by his behaviour, had delayed and obstructed the Authority's investigation. Member Trotman decided that if the information, which was to hand by the time of the determination in November 2019, had been known to the Authority in 2015, the Authority would have made a finding that Mr Maynard had obstructed and delayed the investigation and penalised him. Mr Maynard was, accordingly, penalised in the sum of \$5,000 for his behaviour. Of that sum, the sum of \$3,500 was directed to be paid to Ms Baker.

[14] On the final issue, Mr Maynard was found to have given false and misleading evidence to the Authority in 2015. Member Trotman felt this to be an issue of perjury rather than contempt.

[15] Following the investigation meeting on 22 November 2019, Mr Maynard admitted he had recorded the meeting without the knowledge of either Member Trotman or Ms Baker. A non-publication order was therefore made prohibiting publication of the material he had recorded.

[16] A substantial benefit for Ms Baker, which arose during the investigation meeting of 22 November 2019, was that Mr Maynard accepted he held some responsibility for payment of the amounts ordered by the Authority to be paid in its determination dated 26 August 2015. Accordingly, during the investigation meeting itself he made payment to Ms Baker of the full sum of \$19,321.56.

[17] Costs were reserved but could not be agreed upon. Submissions were received. The determination on costs held that Ms Baker was not entitled to costs. The claim for costs included both the 22 August 2018 determination as well as that issued on 27 November 2019. The determination held that the parties had obtained an equal measure of success in the two investigations.

Ms Baker's challenges to the two determinations

[18] It is noted that at the hearing of the challenges on 11 August 2020 Ms Baker represented herself. She indicated that Mr Halse's instructions had been terminated because of what she considered was his incompetence in representing her. As already indicated, the challenges have been made on a non-de novo basis.

[19] In her evidence in support of the challenges, Ms Baker reiterated the exhaustion and distress she had suffered in endeavouring to recover from the first defendant the sums awarded in her favour in the 2015 determination. She found that as a result of the actions of Mr Barnett and Mr Maynard, the company had been left as an empty shell. She referred to the earlier attempts to settle the matter with the

company reneging on what she thought was an agreed position and she then having to continue with her proceedings in the Authority.

[20] As the challenges have been lodged on a non-de novo basis, Ms Baker wishes to have the Court reconsider the finding of the Authority that the compensation award in the 2015 determination not be altered. She also asks that the Court increase

the penalty awarded against Mr Maynard and the Court review the finding that he was not in contempt of the Authority. So far as the costs determination is concerned she seeks a review of the decision dismissing her claim for costs.

[21] Having heard evidence now from Ms Baker on two separate occasions, I have considerable sympathy with the stress and difficulties she has faced and the medical consequences she has suffered. The defendants' actions in obstructing Ms Baker's claims do not do them any credit. The attempts to enforce the monetary awards in the 2015 determination have clearly not been well handled. The Act provides methods for collection of monetary awards in addition to compliance orders. The jurisdictions of the District Court and High Court for enforcement of judgments (which include determinations of the Authority) are available, but, apart from an application for the execution of a distress warrant by the District Court bailiff, do not appear to have been adopted. Use of these enforcement procedures may well have seen Ms Baker's monetary awards paid to her at a far earlier date and avoided the distress she then suffered.

[22] I nevertheless agree with the findings of the Member Trotman in the determination of 27 November 2019, that the compensation award of Member Crichton in 2015 was fair and reasonable. It was at the high end of awards made by the Authority at the time. It took into account and recognised the humiliation and distress suffered by Ms Baker up until the time when the employment relationship ended.

[23] As the Authority has re-opened the investigation undertaken in 2015 however, I have given consideration to the decision not to award Ms Baker reimbursement for lost wages. It appears that this may have been partly included by Member Crichton in his consideration of the compensation awards. Even though in the longer term, Ms

Baker's decline in her health prevented her from working, that in my view, does not preclude an award of lost wages for the period immediately following termination of employment. I consider this issue was not properly decided by the Authority.

[24] Under s 123(1)(b) of the Act, reimbursement of wages lost by the employee as a result of a grievance is a primary remedy. Ms Baker definitely lost remuneration as a result of her personal grievance. Once that is established, s 128(2) of the Act requires the Authority to provide lost remuneration. In this case, I consider that should be for the full three month period prescribed in s 128(2) and I order accordingly.

[25] Insofar as the challenge to the findings on the penalty are concerned, I consider that the penalty of \$5,000 imposed on Mr Maynard was appropriate. That amount is a proper balancing of the nature of Mr Maynard's behaviour against the globalised maximum. In all the circumstances of Mr Maynard's behaviour, I consider the entire penalty should be paid to Ms Baker and order accordingly.

[26] While the finding on contempt is challenged, I do not disturb the reasoning and findings of Member Trotman in that regard. In my judgment of 17 October 2019, I have already made a finding that Mr Maynard was in contempt for breaching the undertaking that he gave to Member Crichton at the time of the 2015 determination which was confirmed in the 2018 determination. Member Trotman has found that Mr Maynard lying to the Authority was perjury and not contempt. I am not sure that the two are mutually exclusive but I do not disagree with her findings in that regard.

[27] Insofar as the challenge against the costs determination is concerned, I do not consider the fact that the compensation award was not increased means Ms Baker should not be entitled to an award of costs. Costs are claimed, both in respect of the 2018 and the 2019 investigation meetings and the determinations which resulted. Ms Baker was successful in having the investigation re-opened. While not successful in having the compensation increased in the 2019 determination, she was successful in all other respects. She was represented by Mr Halse at both investigations. The first matter was dealt with on the papers. The second was dealt with by way of a full hearing. An award of costs in Ms Baker's favour in the sum of \$4,500 for each investigation should be awarded and I order accordingly. The sum of \$4,500 is the

present daily rate and is appropriate. Accordingly, I award total costs in her favour of

\$9,000 against both defendants on a joint and several basis in view of the fact that Mr Maynard was joined as a party.

[28] Insofar as Ms Baker's expenses claims are concerned, I award the following by way of reimbursement to her of proper disbursements incurred:

- (a) The fee for having a Court bailiff execute a distress warrant amounting to \$200.
- (b) The Authority filing fee of \$153.33.
- (c) High Court filing fees to ensure the first defendant company was not removed from the company register, amounting to \$540.
- (d) A contribution towards the costs incurred in having Mr Maynard served with proceedings amounting to \$500. There is clear evidence that Mr Maynard endeavoured to evade service.
- (e) Employment Court filing fees amounting to \$204.44.

[29] The total of these sums amounts to \$1,597.77. I order that this amount be paid by both defendants again on a joint and

several basis. The balance of the disbursements claimed by Ms Baker are not allowed. Her claims for airfares, parking and accommodation costs are not claimable. I accept that Ms Baker resides in Thames and the hearings were in Auckland. Accommodation costs, however, would not come within the contemplation of usual expenses associated with proceedings such as this. The costs of flying to Christchurch to attempt personal service on Mr Maynard would be similarly categorised. Greater use should have been made of process server facilities available.

[30] I turn to the delay in the first defendant meeting the 2015 awards totalling

\$19,321.56. This sum was paid to Ms Baker by Mr Maynard during the course of the investigation meeting on 27 November 2019. Ms Baker is entitled to interest from 26 August 2015, when the award was made, until 27 November 2019, when the award was paid. Differing rates have applied under the Court Rules over that period; however, I consider that the present method of calculation under sch 2 cl 11 of the Act should apply. Such interest is to be calculated in accordance with the [Interest on Money Claims Act 2016](#), sch 2. Interest should be calculated on the entire sum for the entire period and I order accordingly.

[31] No actions of Ms Baker contributed towards the situation that gave rise to the personal grievances. Accordingly, the remedies awarded in this judgment are not required to be reduced.⁷

Disposition

[32] In summary, the outcome of Ms Baker's challenges is as follows:

- (a) The decision from the re-opened investigation not to disturb the original award of compensation is upheld.
- (b) The penalty awarded against Mr Maynard for \$5,000 for obstruction and delay of the Authority's investigation in 2015 is confirmed except that the entire penalty is to be paid to Ms Baker rather than being apportioned between her and the Crown.
- (c) Hauraki Rail Trail Ltd is ordered to pay Ms Baker reimbursement for lost wages for the three months following termination of her employment.
- (d) The defendants are jointly and severally ordered to pay costs to Ms Baker of \$9,000 as a contribution towards the costs she incurred in being represented at the 2018 and 2019 investigation meetings.
- (e) The defendants are ordered to jointly and severally reimburse Ms Baker for the expenses and disbursements she has incurred set out in

⁷ [Employment Relations Act 2000, s 124](#).

paragraph [28] of this judgment. The total sum to be reimbursed amounts to \$1,597.77.

(f) The defendants are jointly and severally ordered to pay interest calculated in accordance with the [Interest on Money Claims Act 2016](#), sch 2 on the sum of \$19,321.56. The interest is to be calculated for the period 26 August 2015 until 27 November 2019. Mr Maynard has before the Authority accepted responsibility for the compensation and paid it. He should also be responsible, along with the company, for payment of interest.

[33] Finally, it is not possible in this judgment to quantify the wages to be reimbursed to Ms Baker or the interest. Within 14 days from the date of this judgment, she is to file a memorandum setting out the calculation of the gross earnings she would have earned for the three months following termination of her employment on 22 June 2012 and the calculation of interest. Once that memorandum is filed a supplementary judgment will be issued confirming the amount which the defendants will be ordered to pay to her for such reimbursement.

[34] The challenges are allowed to the extent set out in this judgment. As Ms Baker represented herself in these challenges no order for further costs is made.

M E Perkins Judge

Judgment signed at 2.45 pm on 17 September 2020