



# Employment Court of New Zealand

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## Bowen v Bank of New Zealand [2023] NZEmpC 66 (28 April 2023)

Last Updated: 4 May 2023

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURĀU

[\[2023\] NZEmpC 66](#)

EMPC 51/2022

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for stay of proceedings
BETWEEN	MELISSA JANE BOWEN Plaintiff
AND	BANK OF NEW ZEALAND Defendant

Hearing: On the papers

Appearances: M W O'Brien, counsel for plaintiff  
R M Rendle and M Breckon, counsel for defendant

Judgment: 28 April 2023

### INTERLOCUTORY JUDGMENT (NO 4) OF JUDGE J C HOLDEN

#### (Application for a stay of proceedings)

[1] Ms Bowen has applied to the Court of Appeal for leave to appeal this Court's judgment dated 28 February 2023.<sup>1</sup> She now applies for a stay of proceedings in respect of costs pending the outcome of her Court of Appeal proceedings.

[2] The Court had timetabled costs at the conclusion of the substantive judgment.<sup>2</sup> Bank of New Zealand has filed its application for costs in accordance with the timetable.

<sup>1</sup> *Bowen v Bank of New Zealand* [\[2023\] NZEmpC 29](#).

<sup>2</sup> At [40].

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[3] Bank of New Zealand does not oppose the application for a stay but says this is a straightforward costs application where the Court will apply well-established legal principles, and issues such as the claim Ms Bowen advances regarding financial hardship have been addressed in previous costs applications in the course of these proceedings.

[4] Ms Bowen has identified a number of issues in Bank of New Zealand's application for costs that she would wish to address in her submissions in opposition to the application. She says this will involve a degree of complexity and would put both parties to additional cost.

[5] If Ms Bowen is successful in the Court of Appeal she will be entitled to costs in this Court and the Court's considerations will be quite different from those at present. In that case, the additional costs would be unnecessary.

[6] Bank of New Zealand has not raised any prejudice in waiting for costs to be paid to it, and it is difficult to imagine that there would be any in the circumstances.

Ms Bowen has paid a (modest) amount into Court as security for costs.<sup>3</sup>

[7] In these circumstances, I consider the interests of justice will be met by deferring consideration of costs. Accordingly, I make an order staying the proceedings in this Court until the application for leave to appeal has been determined and, if leave is granted, until the appeal has been heard and resolved.

[8] Counsel is to keep the Court advised of the outcome(s) in the Court of Appeal.

[9] Costs are reserved.

Judgment signed at 9 am on 28 April 2023

J C Holden Judge

*3 Bowen v Bank of New Zealand* [2022] NZEmpC 97 at [20].

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