



# Employment Court of New Zealand

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## Farrand Orchards Limited v Tane [2022] NZEmpC 14 (8 February 2022)

Last Updated: 11 February 2022

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

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EMPC 440/2021

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for leave to extend time to file a statement of defence
BETWEEN	FARRAND ORCHARDS LIMITED Plaintiff
AND	MICHAEL TANE Defendant

Hearing: On the papers

Appearances: M Nicholls, counsel for plaintiff  
M Pollak, counsel for defendant

Judgment: 8 February 2022

### INTERLOCUTORY JUDGMENT OF JUDGE KATHRYN BECK

#### (Application for leave to extend time to file statement of defence)

[1] The defendant in this proceeding has applied for leave to file and serve a statement of defence to the plaintiff's challenge to a determination of the Employment Relations Authority.<sup>1</sup> It is one day out of time.

[2] The statement of defence was due on 19 January 2022. Ms Pollak, counsel for the defendant, has advised that she incorrectly calculated the last day for filing the statement of defence as being 21 January 2022. When she was made aware of the error, she immediately filed and served a draft statement of defence on 20 January

<sup>1</sup> *Tane v Farrand Orchards Ltd* [\[2021\] NZERA 503 \(Member Urlich\)](#).

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2022. The defendant now seeks leave to have this statement of defence accepted for filing by the Court.

[3] Mr Nicholls, counsel for the plaintiff, has advised that if proof is proffered that the defendant gave instructions to counsel before Christmas, his instructions to the plaintiff will be to abide by whatever decision the Court makes as to the defendant's application.

[4] In his memorandum counsel for the plaintiff has also advised (appropriately) that even if the defendant had instructed his counsel to appeal after Christmas but before the expiry of the date for the filing of a defence, it is likely that the plaintiff would not object to leave being granted.

[5] Ms Pollak has advised in her application that she was instructed prior to Christmas. I am prepared to accept this

advice.

[6] Ms Pollak has submitted that the application be granted on the grounds that the delay is only one day, the reason for the delay was due to a genuine mistake by counsel which should not prejudice the defendant in any way, and there is no prejudice to the plaintiff. Counsel relies on the Supreme Court's decision in *Almond v Read* in support of her application.<sup>2</sup>

[7] Because of the minimal delay and lack of prejudice to the plaintiff, I am satisfied that this is a case which falls within the category of instances where an assessment of merits is not critical.<sup>3</sup>

[8] In all the circumstances, it is appropriate to grant the application.

[9] The defendant is ordered to file his statement of defence by **4 pm on 9 February 2022**. The Registrar will then arrange a directions conference.

<sup>2</sup> *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801.

<sup>3</sup> At [37].

[10] I make no orders as to costs.

Kathryn Beck Judge

Judgment signed at 12.30 pm on 8 February 2022

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