



Employment Court of New Zealand

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Hapag-Lloyd (New Zealand) Limited v Stevens [2014] NZEmpC 50 (27 March 2014)

Last Updated: 4 April 2014

IN THE EMPLOYMENT COURT AUCKLAND

[\[2014\] NZEmpC 50](#)

ARC 7/14

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

AND IN THE MATTER of an application for leave to file out of time

BETWEEN HAPAG-LLOYD (NEW ZEALAND) LIMITED

Plaintiff

AND ANGELIQUE STEVENS Defendant

Hearing: On the papers dated 10, 18 and 27 March 2014

Judgment: 27 March 2014

INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] Ms Stevens applies for leave to file a statement of defence out of time. The application relates to Hapag-Lloyd (NZ) Limited's challenge to a costs determination of the Employment Relations Authority.¹ The costs challenge is to be heard together

with the defendant's challenge to the Authority's substantive determination,² finding

that Ms Stevens had no personal grievance.

[2] The statement of claim was filed on 29 January 2014 and served the next day. [3] The company neither consents to, nor opposes, the application.

[4] Regulation 19 of the [Employment Court Regulations 2000](#) states that:

¹ [2014] NZERA Auckland 1.

² [2013] NZERA Auckland 461.

HAPAG-LLOYD (NEW ZEALAND LIMITED) v ANGELIQUE STEVENS NZEmpC AUCKLAND [\[2014\] NZEmpC 50](#) [27 March 2014]

Obligation to file statement of defence

(1) Except where the Registrar of the court or a Judge otherwise orders, every defendant who intends to defend any proceedings in the court must file a statement of defence with the Registrar of the court.

(2) The statement of defence must be filed,—

(a) for a defendant served in New Zealand, within 30 clear days after the date of the service of the statement of claim on the defendant; or

(b) for an overseas party, within the time specified in regulation 31E. (3) Every defendant must, as soon as practicable after filing a statement of

defence under subclause (1), serve a copy of the statement of defence

on the plaintiff.

(4) Every defendant who fails to comply with subclauses (1) to (3) may defend the proceedings only with the leave of the court.

[5] It follows that unless Ms Stevens filed a statement of defence within the requisite time she could only defend the proceeding with the leave of the Court. She took no formal steps until 10 March 2013 when an application for leave to defend the company's challenge out of time was filed.

[6] The Court's discretion to grant leave to defend in these circumstances must be exercised judicially and in accordance with principle. The overriding consideration is the interests of justice but, in assessing where that lies, relevant factors will include the extent of the delay, the reasons for the delay, whether the delay is adequately explained, any prejudice resulting from granting or refusing leave and whether there is an arguable defence to the claim.

[7] Ms Stevens has sworn an affidavit in support of the application and Ms Hartdegen has filed a draft statement of defence, together with a memorandum of counsel. It is apparent that the delay was the result of an inadvertent mistake by counsel, who miscalculated the timeframe for filing the statement of defence.

[8] It appears that once the timeframe was drawn to counsel's attention there were delays in filing an application, because consideration was being given to whether this would be necessary if the plaintiff's consent was obtained. I pause to

note that reg 19 makes it clear that the leave of the Court is required, and that it cannot be dealt with simply by the agreement of the parties.

[9] The lapse in time was not substantial and there is no suggestion of prejudice.

[10] Ms Stevens has an arguable defence, although the challenge raises a number of issues relating to the way in which the discounting factors identified by the Authority ought to be applied and the Calderbank offer treated.

[11] Having regard to the overall interests of justice I am satisfied that leave ought to be granted.

[12] The draft statement of defence will be accepted as a substantive statement. [13] Costs are reserved at the request of the parties.

Christina Inglis

Judge

Judgment signed at 12.45 pm on 27 March 2014