Employment Court of New Zealand

Idea Services Limited v Dickson [2010] NZEmpC 64 (21 May 2010)

Last Updated: 26 May 2010

IN THE EMPLOYMENT COURT WELLINGTON

[2010] NZEMPC 64

WRC 31/08

WRC 34/08

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 IDEA SERVICES LIMITED Plaintiff

AND PHILLIP WILLIAM DICKSON Defendant

Hearing: 28 April 2010

(Heard at Wellington)

Court: Chief Judge G L Colgan

Judge B S Travis

Judge A A Couch

Appearances: CH Toogood QC, Counsel for Plaintiff

Peter Cranney and Anthea Connor, Counsel for Defendant and for Service and Food Workers Union Nga Ringa Tota Inc as added party for stay application purposes

Judgment: 21 May 2010

INTERLOCUTORY JUDGMENT OF THE FULL COURT

[1] Last year, we gave two judgments in these matters. Both involved the interpretation and application of the Minimum Wage Act 1983. In the first,[1] we decided that "sleepovers" performed by Mr Dickson were "work" for the purposes of the Act. In the second,[2] we decided how the payment provisions of the Act should be applied. Both decisions are the subject of applications to the Court of Appeal for leave to appeal and the issues are potentially of such general importance and wide

[2] The matter now before us is an application by Idea Services Ltd (Idea) for a stay of execution until those appellate processes are concluded.

[3] At the start of his submissions, Mr Toogood properly observed that any stay could only bind the parties to these proceedings. He noted, however, that the proceedings were representative in nature and the outcome was likely to affect the rights of many thousands of employees and the obligations of other employers. In this context, he said that the point of seeking a stay was to give the Court an opportunity to send a signal to other employees that it was not appropriate to pursue similar claims until this litigation was finally concluded.

[4] Mr Toogood then outlined to us the potential cost to Idea of meeting claims for arrears of wages payable to its other employees and of meeting increased future payment obligations arising out of our judgments. For the purposes of this application, we accept that the sums of money involved are very large indeed and beyond the present means of Idea to pay. Almost all of Idea's funding is from the Government which is unwilling to consider providing additional funding until the litigation is concluded.

[5] Mr Toogood confirmed to the Court an undertaking by Idea to expeditiously pursue its appeals to the extent that leave was granted.

[6] In his submissions, Mr Cranney also addressed the wider issue of employees other than Mr Dickson whose rights will effectively be determined by the final decision in this litigation. Noting that they were largely low paid workers, he submitted that they would be prejudiced by a stay and that the Court should only consider granting a stay on terms securing future payment to all potentially affected workers.

[7] With respect to the parties and to counsel, we think these arguments overlook a fundamental point. The proceedings before us are not yet concluded. Although we have decided the key issues of principle and it appears very likely that Mr Dickson will be entitled to some arrears of wages, that has not yet been decided and the amount of any arrears has not been fixed. As a result, no judgment has been entered

or other order made which can be executed. That being so, it would be wrong in principle to order a stay of execution.

[8] It would also be wrong for us to indicate to other potentially affected employees that they should not commence proceedings in reliance on our decisions until the appellate process is over. We were told that many of those employees have been engaged in roles similar to Mr Dickson's for many years and that their possible claims for arrears of wages will have to be reduced to the maximum of 6 years imposed by the Limitation Act 1950. Those employees have a vital interest in making their claims promptly and ought not to be dissuaded from doing so.

[9] Having said that, we agree with the proposition underlying Mr Toogood's submissions that it would be inappropriate for those claims to be crystallised into judgments or orders and enforcement action taken before the issues dealt with in our judgments have been finally decided. In Mr Dickson's case that can be avoided by case management, obviating the need for any future order for stay of execution. In other cases, we urge the Employment Relations Authority to take a similar approach and delay any final determination of claims based on our judgments until the current litigation is concluded. Should that not occur, a stay may properly be sought in those cases.

[10] On that basis, we see no reason to grant a stay in the current proceedings, either now or in the future. Accordingly, the application is dismissed.

[11] We reserve costs on this application.

AA Couch
Judge
for the full Court

Judgment signed at 2.30 pm on Friday 21 May 2010

---

[1] WC 17/09, 8 July 2009

[2] WC 17A/09, 11 December 2009
