



# Employment Court of New Zealand

You are here: [NZLII](#) >> [Databases](#) >> [Employment Court of New Zealand](#) >> [2016](#) >> [2016] NZEmpC 4

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

## Jones v Christchurch European Limited [2016] NZEmpC 4 (4 February 2016)

Last Updated: 11 February 2016

### IN THE EMPLOYMENT COURT CHRISTCHURCH

#### [\[2016\] NZEmpC 4](#)

EMPC 394/2015

IN THE MATTER OF an application for leave to file a challenge out of time

BETWEEN GETHYN JONES Plaintiff

AND CHRISTCHURCH EUROPEAN LIMITED

Defendant

Hearing: (on the papers filed on 24 December 2015) Counsel: P Moore, advocate for the plaintiff

R Thompson, advocate for the defendant

Judgment: 4 February 2016

#### JUDGMENT OF JUDGE B A CORKILL

[1] This judgment resolves an application for leave to file a non de novo challenge out of time.

[2] The challenge relates to a determination of the Employment Relations Authority (the Authority) dated 24 November 2015.<sup>1</sup> In it, Mr Gethyn Jones succeeded in establishing that he had been unjustifiably disadvantaged and unjustifiably dismissed, and remedies were awarded; however a claim relating to an alleged unpaid retainer was dismissed.

[3] Any challenge should have been instituted by 22 December 2015. An attempt to file the challenge was made one day later due to an inadvertent error on

the part of the plaintiff's advocate.

<sup>1</sup> *Jones v Christchurch European Ltd* [2015] NZERA Christchurch 181.

GETHYN JONES v CHRISTCHURCH EUROPEAN LIMITED NZEmpC CHRISTCHURCH [2016] NZEmpC

4 [4 February 2016]

[4] Evidence in support of the application is to the effect that the error was unintentional and prompted by a genuine miscalculation, the problem being catalysed by other pressures.

[5] It is also the case that the advocate for the defendant was understandably away during part of January, and that even if the challenge had been issued within time, it may not have been possible for service to take place until late January 2016. Indeed the representative for the defendant has confirmed to the Court that it does not oppose the application made by the plaintiff. I conclude that there is no prejudice to the defendant.

[6] The election is in respect of part only of the determination, relating to the issue as to whether the employee's retainer was underpaid. It is alleged that the calculation made by the Authority was not undertaken correctly, and that it accordingly erred in rejecting the employee's claim. I find that the claim is tenable.

[7] Given the period of short delay involved, the inadvertence of the applicant's representative, and the proposed grounds for raising the challenge, I conclude that leave should be granted.

[8] The plaintiff is to file his statement of claim within seven days of the date of this judgment. The relevant filing fee has been paid. Service of the statement of claim will need to take place thereafter in accordance with the [Employment Court Regulations 2000](#).

[9] Since an indulgence has been granted, I make no order as to costs.

B A Corkill

Judge

Judgment signed at 11.15 pm on 4 February 2016

---

NZLII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#)

URL: <http://www.nzlii.org/nz/cases/NZEmpC/2016/4.html>