



Employment Court of New Zealand

You are here: [NZLII](#) >> [Databases](#) >> [Employment Court of New Zealand](#) >> [2022](#) >> [2022] NZEmpC 163

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

Matajod v Crazy Horse Limited [2022] NZEmpC 163 (7 September 2022)

Last Updated: 12 September 2022

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

[\[2022\] NZEmpC 163](#)

EMPC 91/2022

IN THE MATTER OF a challenge to a determination of
the Employment Relations
Authority
AND IN THE MATTER OF an application for security for
costs
AND IN THE MATTER OF application to extend time to file
a statement of defence
BETWEEN WARISSARA MATAJOD
Plaintiff
AND CRAZY HORSE LIMITED
Defendant

EMPC 199/2022

IN THE MATTER OF an application to extend time to file a
challenge to a determination of the
Employment Relations Authority
BETWEEN CRAZY HORSE LIMITED
Applicant
AND WARISSARA MATAJOD
Respondent

Hearing: On the papers
Appearances: M Prattley, counsel for Warissara
Matajod J Hobcraft, counsel for Crazy
Horse Ltd
Judgment: 7 September 2022

WARISSARA MATAJOD v CRAZY HORSE LIMITED [\[2022\] NZEmpC 163](#) [7 September 2022]

INTERLOCUTORY JUDGMENT (NO 2) OF CHIEF JUDGE CHRISTINA INGLIS

(Application for security for costs)

(Application to extend time for filing statement of defence) (Application to extend time for filing a cross challenge)

Introduction

[1] Ms Warissara Matajod was employed by Crazy Horse Ltd (the company) at its restaurant in Christchurch. She was

dismissed for redundancy following the first COVID-19 lockdown in 2020. She took a claim to the Employment Relations Authority concerning the way in which her employer had dealt with her pay, the wage subsidy, annual leave during the lockdown, and various other related issues. The Authority upheld the grievance and awarded Ms Matajod unpaid wages, holiday pay and \$5,000 compensation under [s 123\(1\)\(c\)\(i\)](#) of the [Employment Relations Act 2000](#) (the Act).

[2] On 23 March 2022, Ms Matajod filed a non-de novo challenge in the Court, claiming that the Authority erred in law in its approach to the calculation of non-pecuniary loss under [s 123\(1\)\(c\)\(i\)](#).

[3] The timeframe for filing any cross challenge is 28 days after the date of the Authority's determination.¹ The timeframe for filing a statement of defence is 30 clear days after the date of service of the statement of claim.² An amended statement of claim to incorporate a new cause of action in respect of the Authority's subsequent costs determination was filed on 3 May 2022. Any statement of defence to the amended statement of claim was due for filing 10 working days later, namely 17 May 2022.³

1 [Employment Relations Act 2000, s 179\(2\)](#).

2 [Employment Court Regulations 2000](#), reg 19(2)(a).

3. "Employment Court of New Zealand Practice Directions" www.employmentcourt.govt.nz at No 10.

[4] The company did not file a cross challenge or statement of defence within the appropriate timeframes.

[5] It is against this background that the current applications arise. The company applies for leave to file a statement of defence to Ms Matajod's statement of claim; the company applies for leave to file a cross challenge to the Authority's determination; and Ms Matajod has applied for an order for security for costs against the company.

Application for leave to extend time to file a statement of defence; cross challenge

[6] It is convenient to deal with the company's applications together. The approach to applications of this sort can be summarised as follows.

[7] The Court has a discretion to grant an extension of time to take various steps, including to file a statement of defence or a cross challenge.⁴ The discretion is to be exercised in accordance with principle. The overarching consideration is the interests of justice. The usual factors that will be considered are:⁵

- the reasons for the omission to file within time;
- the length of the delay;
- any prejudice or hardship to any other person;
- the effect on the rights and liabilities of the parties; and
- subsequent events.

[8] Insofar as an application to extend time to file a challenge is concerned, the Court has previously had regard to the merits of the proposed challenge. This factor is now approached with caution, for reasons which I come to.

4 [Employment Relations Act 2000, s 219](#).

5 *Stevenson v Hato Paora College Trust Board* [2002] NZEmpC 39; [2002] 2 ERNZ 103 (EmpC) at [8].

[9] An affidavit has been filed in support of the company's applications to extend time. It is said that the company was prepared to accept the Authority's determination for pragmatic reasons. Accordingly, it applied to the Authority for the orders made against it to be subject to a time-payment arrangement. That application has yet to be determined. Ms Matajod's decision to challenge the Authority's determination is said to have prompted the company to revisit its original approach. It decided that it wished to defend the challenge but also broaden the scope of the Court's inquiry. It additionally wished to file a de novo challenge to the Authority's costs determination. All of this, it is said, "automatically" placed the company outside the statutory timeframes.

[10] Further delays were then experienced for a range of reasons set out in Mr Stokes' affidavit, including that staff were on leave, negative media publicity impacted the company's ability to recruit staff, short staffing required him to work long hours, his lawyer had had personal difficulties, and his overall position had made it difficult to instruct representatives for the company.

[11] Ms Matajod's statement of claim was filed on the last day for filing. I accept that the company was caught off guard by that step. While that might go some way to explaining why a challenge was not filed on behalf of the company within the 28-day timeframe provided for in the Act, it does not explain why it then took 91 days from that date to file an application for leave to file the challenge.⁶ Further, it does not explain why a statement of defence to Ms Matajod's statement of claim was not filed and served within the 30-day statutory timeframe or, alternatively, why a statement of defence was not filed within 10 working days of her amended statement of claim. Nor does it explain why no steps were taken during this intervening

period if timing was going to be a difficulty.

[12] I accept, based on the affidavit evidence, that the company was facing a challenging time, for a variety of reasons. I do not, however, consider that these factors adequately explain the length of delay that occurred. The delay was extensive, and

6. An earlier attempt at filing, 79 days late, was rejected on the basis that it was non-compliant. A further delay of 12 days followed.

there was a failure to take prompt steps to address it. These factors weigh heavily against the grant of leave.⁷

[13] If leave is not granted to file a statement of defence, the company will be unable to defend the challenge. If leave is not granted to file a statement of claim, the company will not be able to broaden the scope of the challenge to put in issue the justification for the dismissal and the costs determination. Both would prejudice the company, and that prejudice weighs in favour of granting leave. If leave is granted to file a statement of defence, Ms Matajod will have her claim defended. I do not consider this to be a significant prejudice. If leave is granted to file a challenge, Ms Matajod will be obliged to meet a much broader claim, and she will face additional costs, time and inconvenience in doing so.

[14] Counsel for Ms Matajod refers to ongoing delays occasioned by the company during the lifecycle of the litigation. I agree that this has been a feature to date and is a factor which weighs against the grant of leave.

[15] Counsel for Ms Matajod submits that the company's proposed challenge lacks merit. Counsel for the company suggests that the proposed challenge is strong.

[16] The Supreme Court has made it clear that there is difficulty in assessing the merits of an application at an early stage and the exercise should be approached with caution. Particularly relevant to this case is the Supreme Court's observation that "the merits will not generally be relevant where there has been an insignificant delay as a result of a legal adviser's error and the proposed respondents have suffered no prejudice (beyond the fact of an appeal)".⁸ I have already found that the delay was not insignificant; it was not the result of a legal adviser's error; and if leave is granted to pursue a challenge, Ms Matajod will be exposed to prejudice.

[17] The merits of the proposed challenge are difficult to discern, particularly where the hearing of the proposed challenge will likely require the hearing afresh of evidence related to the purported justification of the dismissal. The Authority has a practice of

⁷ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [37]- [38].

⁸ At [39].

not recording evidence given. Accordingly, a transcript is not available to the Court when an Authority determination is challenged. As has previously been observed, this poses difficulties when the Court is asked to assess the extent to which the Authority may have erred in fact or law in determining a matter.⁹ All that can really be said with any degree of confidence at this stage is that the proposed challenge cannot be dismissed as being devoid of merit.¹⁰

[18] The company submits that other workers who it employs may be detrimentally impacted if leave is declined to file a statement of defence or a challenge, although does not explain why this is said to be so, and I am not persuaded that it is a factor to weigh into the mix in this case.

[19] There is an additional point which emerges from the company's submissions which I consider to be relevant, namely that the company is in difficult financial circumstances and it is said that it would be unable to meet an order for security for costs if one was made against it. I also note that a statutory demand was served on the company on behalf of Ms Matajod which remained unpaid on 29 August 2022. The company's financial position indicates that further prejudice would likely be suffered by Ms Matajod if the application for leave to file a challenge was granted as the matters before the Court would be broadened, and her costs would thereby increase.

[20] Having regard to the above factors and the overarching consideration of the interests of justice, I am prepared to grant the company leave to file a statement of defence to Ms Matajod's statement of claim. I consider that it is in the broader interests of justice for this to be permitted and that the prejudice to Ms Matajod in granting leave is minimal. However, I decline leave to file a challenge to the Authority's determination. I consider that the factors weigh significantly against leave being granted, having particular regard to the prejudice that would be caused to Ms Matajod in the particular circumstances.

⁹ *Clear v Waikato District Health Board* [2007] ERNZ 338 (EmpC) at [21].

¹⁰ *Almond v Read*, above n 7, at [39].

Security for costs

[21] The application for security for costs was linked to the application for leave to extend time to file a challenge. Having declined leave for the company to pursue a challenge, it is unnecessary to deal with the application advanced on Ms Matajod's behalf for an order for security for costs.

Conclusion

[22] Leave is granted for the company to file a statement of defence. Any statement of defence is to be filed and served within 10 working days of the date of this judgment.

[23] Leave is declined for the company to file a challenge to the Authority's determination.

[24] It is unnecessary to deal with the application for security for costs having regard to the orders I have made.

[25] I decline the company's invitation to reserve the issue of costs until after the substantive challenge. Rather, I consider it to be in the interests of justice to do so now, including in light of the company's apparent financial position.

[26] It would be preferable if the issue of costs on these applications could be agreed between the parties to avoid any further unnecessary expense. If costs cannot be agreed, I will receive memoranda, with submissions on behalf of Ms Matajod to be filed and served within five working days of the date of this interlocutory judgment; the company is to have a further five working days; the file is then to be referred to me for a decision on costs on the papers.

Christina Inglis Chief Judge

Judgment signed at 9 am on 7 September 2022

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

URL: <http://www.nzlii.org/nz/cases/NZEmpC/2022/163.html>