



Employment Court of New Zealand

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McGearty v Air New Zealand Limited [2024] NZEmpC 151 (12 August 2024)

Last Updated: 18 August 2024

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2024\] NZEmpC 151](#)

EMPC 59/2024

IN THE MATTER OF a challenge to a determination
of the Employment Relations
Authority
AND IN THE MATTER OF an application for leave to
intervene
BETWEEN GARTH McGEARTY
Plaintiff
AND AIR NEW ZEALAND LIMITED
Defendant

Hearing: On the papers
Appearances: RE Harrison KC, counsel for plaintiff PA Caisley, counsel
for defendant
P Wicks KC, counsel for New Zealand Air Line Pilots Assoc
Inc as intervener
Judgment: 12 August 2024

CONSENT INTERLOCUTORY JUDGMENT OF JUDGE KATHRYN BECK

(Application for leave to intervene)

[1] The New Zealand Air Line Pilots Assoc (NZALPA) has sought leave to intervene in these proceedings.

[2] The application arises in the context of a challenge to a determination of the Employment Relations Authority, which found that Air New Zealand Ltd's actions, and how it acted, were what a fair and reasonable employer could have done in all the circumstances at the time those actions occurred, and that Captain Garth McGearty did not have personal grievances under either s 103(1)(b) or s 103(1)(c) of the

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[Employment Relations Act 2000](#) (the Act).¹ NZALPA subsequently sought leave to intervene.

[3] The plaintiff, while not opposed to NZALPA being granted leave to intervene, did not agree to the terms upon which it was sought.

[4] The application was set down for hearing on 6 August 2024.

[5] By a joint memorandum filed on 5 August 2024, NZALPA and the plaintiff advised the Court that having had the opportunity to review the submissions filed by the plaintiff, they have now reached an agreed position. NZALPA now seeks a more limited grant of leave to intervene, namely that it be permitted to intervene as an interested party under sch

3 cl 2(2) of the Act to:

- (a) appear at the hearing of the challenge;
- (b) make written submissions and, with leave of the trial Judge, address those submissions orally; and
- (c) make an application for special leave to file evidence/documents and to cross-examine if it considers such an application is required, having considered the evidence filed for the substantive hearing.

[6] The more limited grant of leave to intervene is not opposed by the plaintiff. The defendant supported NZALPA's application and has previously advised the Court that it considers the Court would benefit from hearing from NZALPA.

[7] Applications for leave to intervene fall to be considered under sch 3 cl 2(2) of the Act. The test is whether, in the opinion of the Court, the applicant is "justly entitled to be heard". The test is broad and is determined having regard to the particular circumstances of the case.²

1 *McGearty v Air New Zealand Ltd* [2024] NZERA 55 (Member Blick) at [8].

2. *Zhou v Chief Executive of the Department of Labour* [2010] NZEmpC 162, [2010] ERNZ 400 at [3], [5], [7] and [14]; and *Matsuoka v LSG Sky Chefs New Zealand Ltd* [2011] NZEmpC 24 at [6]. See also *Leota v Parcel Express Ltd* [2019] NZEmpC 152 at [6]–[10] summarising some of the principles that apply.

[8] I have considered whether there are any countervailing considerations which might tell against the grant of leave. I have been unable to identify any.

[9] In light of the agreed position between NZALPA and the plaintiff, and the stated position of the defendant, I am satisfied that NZALPA is entitled to be heard, and leave is granted accordingly. The half-day fixture scheduled for 6 August 2024 is vacated.

[10] Leave is granted on the basis that NZALPA may:

- (a) appear at the hearing of the challenge;
- (b) make written submissions and, with leave of the trial Judge, address those submissions orally; and
- (c) make an application for special leave to file evidence/documents and to cross-examine if it considers such an application is required, having considered the evidence filed for the substantive hearing.

[11] There is no issue as to costs.

Kathryn Beck Judge

Judgment signed at 1.50 pm on 12 August 2024

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