

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2024] NZEmpC 78
EMPC 108/2024**

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 MANUKA HEALTH NEW ZEALAND
LIMITED
Plaintiff

AND TOMISLAV KALIC
Defendant

Hearing: On the papers

Appearances: G Bevan, counsel for plaintiff
No appearance for defendant

Judgment: 15 May 2024

**INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH
(Application for stay of proceedings)**

[1] Tomislav Kalic was employed by Manuka Health New Zealand Ltd as a beekeeper from 29 July 2019 until he resigned on 1 December 2019 with effect from 28 December that year. This period of employment was the second one he had with Manuka having been first employed by the company from August 2015 until April 2019.

[2] In the Employment Relations Authority, Mr Kalic succeeded in a claim that he was unjustifiably disadvantaged in his employment by Manuka.¹ The Authority awarded him compensation under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act).²

[3] Manuka challenged the determination, electing to place in issue four paragraphs of it: [46], [47], [54] (in part) and [59].

[4] Paragraphs [46] and [47] contain findings the Authority made which underpinned Mr Kalic's success. In paragraph [46], the Authority held that a letter written by Manuka, dated 12 November 2019, stated that Mr Kalic's work had been monitored since his return to the company's employment. The Authority determined that Manuka did not discuss with Mr Kalic the fact that his work was being monitored or how that was happening.

[5] Paragraph [47] contains a discussion of good faith in the Act, as it relates to being active and constructive in establishing and maintaining a productive employment relationship. In that paragraph, the Authority held that, in Manuka failing to make clear to Mr Kalic that he was being monitored from the outset of employment, it failed in the duty it owed to him to be active and constructive in establishing and maintaining the employment relationship.

[6] Paragraph [54] contains a finding that Manuka unjustifiably disadvantaged Mr Kalic because it failed to put in place a fair and reasonable system to support him when he returned to work, and paragraph [59] provides for compensation.

[7] In electing to challenge those four paragraphs, Manuka has pleaded that a material error of fact was made; namely, because the defendant's letter of 12 November 2019, relied on to reach conclusions adverse to Manuka in the challenged passages did not say that Mr Kalic's work was monitored since his return to the company's employment.

¹ *Kalic v Manuka Health New Zealand Ltd* [2024] NZERA 107 (Member Urlich).

² At [59].

[8] The pleading is that Mr Kalic's work was not, in fact, monitored from or around the point when he returned and that there was therefore no basis for the Authority's conclusions. Manuka has also pleaded that, given the nature of the disciplinary processes which gave rise to the personal grievance claims, there was no basis for the Authority's finding that there was a breach of duty by the company.

The application for a stay

[9] Against that background Manuka has applied for a stay of the proceeding in the Court. The company has done so to preserve its position while waiting for the outcome of its application to the Authority seeking to reopen the investigation.

[10] In a supporting memorandum, Mr Bevan, who acts for the company, advised the Court that the Authority has directed a timetable to resolve the application to reopen the investigation.

[11] The submissions in support of the application were succinct. Mr Bevan submitted that it was in the interests of justice to grant a stay because:

- (a) the application to the Authority seeking to reopen the investigation has been brought for a proper purpose; and
- (b) there is no adverse impact on any party.

Analysis

[12] The Court has jurisdiction to grant a stay in circumstances such as those presented here.³

[13] I am satisfied that it is appropriate to grant a stay. The plaintiff was obliged to file a challenge to preserve its appeal rights. However, the need to carry on with the litigation will be obviated if the Authority reopens the investigation. Providing an opportunity to resolve the application before the Authority without the parties being

³ See for example *Transpacific All Brite Ltd v Sanko* [2012] NZEmpC 7, applying *Mackay Refined Sugars (NZ) Ltd v New Zealand Sugar Co Ltd* [1997] 3 NZLR 476 (HC).

committed to the time and cost of progressing this challenge is an appropriate basis on which to proceed.

[14] The application sought an ancillary order excusing the defendant from filing a statement of defence. The defendant has, in fact, taken no steps in the proceeding at all and the time to file a statement of defence has passed. The situation is preserved, I consider by granting the application for a stay without anything more.

Outcome

[15] The application for a stay of this proceeding is granted pending further order of the Court.

[16] Costs are reserved.

K G Smith
Judge

Judgment signed at 11.40 am on 15 May 2024