

Determination Number; WA 84/05

File Number: WEA 110/01

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

<b>BETWEEN</b>	Dr Graham Paul (applicant)
<b>AND</b>	Capital and Coast District Health Board (first respondent)
<b>AND</b>	Hutt Valley District Health Board (second respondent)
<b>REPRESENTATIVES</b>	Dr Paul represented himself Keith Binnie and Samantha Turner for the first and second respondents
<b>MEMBER OF THE AUTHORITY</b>	Denis Asher
<b>SUBMISSIONS RECEIVED</b>	22 & 27 April 2005
<b>DATE OF DETERMINATION</b>	20 May 2005

**DETERMINATION OF AUTHORITY: Application for Stay of Proceedings**

**Employment Relationship Problem**

1. This application has been brought by the respondents.

2. I earlier found in favour of Dr Paul's claim that the second respondent had failed to provide him with four hours of rostered duty per week for the purpose of medical learning not directly derived from clinical work, but found against his other claims – refer to determination WA 44/02, 24 May 2002. I ordered the second respondent to pay to Dr Paul the sum of \$3,300.00 under s. 123 (c) (i) of the Act. The Boards now ask for a stay of proceedings.

### **Submissions: the Boards' position**

3. Dr Paul has applied under s. 179 of the Act to have part of determination WA 44/02 heard *de novo* by the Employment Court.
4. The application for a stay of proceedings is made on the ground that the Authority has the required power – Reg. 64 of the Employment Court Regulations 2000 (note also s. 180 of the Act).
5. Dr Paul had limited success in respect of his original claim. In the event his election to the Court is unsuccessful but no stay is ordered Dr Paul will have the benefit of the award that he must then pay back. Dr Paul has caused a lengthy delay in pursuing his challenge to the Court and interest on the award is accruing which Dr Paul is likely to have to repay should the stay not be granted and his election prove unsuccessful.
6. Dr Paul has only recently requested payment of the sum and the Boards had assumed Dr Paul had accepted the *de facto* stay on the judgment for the past 2 years and 11 months. The Boards are requesting that the 'stay' of nearly 3 years be continued pending the hearing in the Court which is imminent.
7. The Second Respondent is prepared to pay the judgment sum to its solicitors' trust account or to the Registrar of the Employment Court at Wellington, until Dr Paul's challenge is determined.
8. The Boards believe that the balance of convenience and the status quo support the stay being granted. There is no evidence Dr Paul has suffered any hardship since

the Authority's original determination or that he would suffer if the money was held on trust. Dr Paul has indicated he has the means to repay the sum but provided no evidence in support of his claim. The only fair and reasonable approach is to stay the proceedings until the Court's substantive decision. A hearing has been set down for 7 October 2005.

### **Dr Paul's position**

9. Dr Paul opposes the application for a stay. He says he, *"did not object to the (Board's) refusal to pay damages at the time because the amount was so small; I expected a Court hearing within a few months ... . I then forgot all about the damages."*
10. Dr Paul points out that he has paid the award of costs made in favour of the Boards. He also says that the Boards are responsible for the near three years' delay, arising out of their *"inappropriate objections to the case"*, including refusing to name potential witnesses and having to be ordered to do so by the Court and being unsuccessful in respect of claims that the Court did not have jurisdiction to hear several matters.

### **Discussion and Findings**

11. I am satisfied that the application for stay should be granted. I reach this conclusion for the following reasons:
12. Dr Paul *"forgot"* about the damages awarded in his favour. He seeks them now not because of hardship but only because he has remembered them. Given the delay of nearly three years that has occurred in the meantime the damages are clearly of little moment to Dr Paul. Because a substantive hearing of Dr Paul's challenge has been set down for October of this year I am satisfied that it is fair and reasonable, as the Boards propose, for the damages and the interest they have accrued to date to be paid into an interest bearing account held by the Boards' solicitors.

### **Determination**

13. For the reasons set out above, and by way of continuing fairly and reasonably the current balance of convenience and the status quo, I find in favour of the Capital and

Coast District and Hutt Valley District Health Boards' application that the award of damages in favour of Dr Paul, as set out in determination WA 44/02 dated 24 May 2002, be stayed pending the hearing in the Employment Court on 7 October 2005 of the latter's *de novo* application.

14. I also direct, consistent with the Boards' proposal, that the damages awarded Dr Paul and the interest accrued on those monies to date be placed in the Boards' solicitors' interest-bearing trust fund until 7 October 2005 when this matter can be reviewed by the parties once again, in the first instance.

**Denis Asher**  
**Member of Employment Relations Authority**