



# Employment Court of New Zealand

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## Reid v Ngati Rangi Trust [2021] NZEmpC 18 (25 February 2021)

Last Updated: 2 March 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND WELLINGTON

I TE KŌTI TAKE MAHI O AOTEAROA TE WHANGANUI-A-TARA

[\[2021\] NZEmpC 18](#)

EMPC 449/2019

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application to dismiss proceedings
BETWEEN	CASSANDRA REID Plaintiff
AND	NGĀTI RANGI TRUST Defendant

Hearing: On the papers

Appearances: A Halse, advocate for plaintiff  
G Ballara and S Radcliffe, counsel for defendant

Judgment: 25 February 2021

INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN

### (Application to dismiss proceedings)

[1] Ms Reid has filed a challenge to a determination of the Employment Relations Authority (the Authority).<sup>1</sup>

[2] Timetabling orders have been made to progress the challenge. Ms Reid has repeatedly failed to comply with those orders and Ngāti Rangi Trust now applies for an order dismissing Ms Reid's proceedings. It also seeks costs.

[3] This judgment resolves Ngāti Rangi Trust's application.

<sup>1</sup> *Reid v Ngāti Rangi Trust* [\[2019\] NZERA 626 \(Member Ryan\)](#).

CASSANDRA REID v NGĀTI RANGI TRUST [\[2021\] NZEmpC 18](#) [25 February 2021]

### **There have been repeated failures to comply with Court orders**

[4] The chronology for this matter shows the extent of Ms Reid's non-compliance. In summary:

13 May 2020 – Ms Reid's briefs of evidence are due for filing following the Court's original six-week enlargement of time due to COVID-19. This requirement is not met.

25 May 2020 – Ms Reid again fails to comply with the Court's revised timetable for filing her evidence.

26 May–4 June 2020 – Mr Halse, advocate for Ms Reid fails to respond to the Court Registry.

12 June 2020 – Ms Reid again fails to comply with the Court’s further revised timetable.

19 June 2020 – the Registry contacts Mr Halse asking when it may expect Ms Reid’s evidence. No reply is received.

22 June 2020 – the Court vacates the rescheduled hearing date for 20 July 2020 and requires Ms Reid, if she intends to proceed at all, to file and serve an application for an extension of time for the filing and service of her evidence.

25 June 2020 – Mr Halse files an application for an extension of time for Ms Reid to file her evidence and with that, submits an additional document titled “Draft brief of evidence of Cassandra Reid”, signed by Mr Halse.

7 August 2020 – Ms Reid’s submissions for the application to extend time are due but none are filed.

16 September 2020 – Ngāti Rangī Trust applies for an order dismissing the proceedings.

30 September 2020 – Ms Reid files a notice of opposition to the application for an order dismissing the proceedings.

### **Failures have led to application**

[5] Ngāti Rangī Trust says that dismissal of the proceedings is warranted due to Ms Reid’s failure to prosecute her proceedings and her repeated failure to comply with Court orders and/or directions. It says there has been inordinate and inexcusable delay, which is an abuse of the Court processes, and that Ngāti Rangī Trust has been seriously prejudiced by the delay. It says it is in the interests of justice to dismiss the proceedings.

[6] In opposing the application, Ms Reid points to delays she says were caused by Ngāti Rangī Trust and its representative in raising issues regarding an agreed bundle of documents, and by the COVID-19 pandemic.

[7] She also says there have been delays caused by her relocation and illness and that the Ngāti Rangī Trust’s attempts to have her proceedings struck out are in breach of good faith.

[8] In submissions filed for Ms Reid, Mr Halse puts the blame for her missed deadlines on himself and says Ms Reid should not be penalised for the failings of her representative.

### **Principles applicable arise from the High Court Rules and case law**

[9] As there are no provisions in the [Employment Relations Act 2000](#) (the Act) or the [Employment Court Regulations 2000](#) that deal with applications such as this, the Court looks to the [High Court Rules 2016](#).<sup>2</sup> Ngāti Rangī Trust relies on High Court Rule 15.2(a), which allows the Court to dismiss or stay all or any part of a proceeding if the plaintiff fails to prosecute all or part of the plaintiff’s proceeding to trial and judgment. In considering such an application, the Court looks at whether the plaintiff has been guilty of inordinate delay; whether the delay is inexcusable; and whether it has seriously prejudiced the defendant.<sup>3</sup>

2 [Employment Court Regulations 2000](#), reg 6(2)(a)(ii).

3 *Lovie v Medical Assurance Society New Zealand Ltd* [1991] NZHC 2041; [1992] 2 NZLR 244 (HC) at 248.

### **Inordinate and inexcusable delays in these proceedings**

[10] The chronology summarised in this judgment demonstrates the inordinate delays that have occurred in these proceedings. The delays in filing the plaintiff’s briefs of evidence are extraordinary and occurred in spite of several extensions being granted. In each case, the deadline for filing Ms Reid’s evidence passed without any advance advice from Ms Reid and without any proper explanation for the non-compliance. Emails from the Court Registry to Mr Halse often were unanswered. Although a purported draft brief of evidence was provided, a proper brief from Ms Reid still has not been filed.

[11] The Court is very conscious of the impact the COVID-19 pandemic has had on all litigants and allowance was given for that in this case. No other explanations were provided to the Court or to Ngāti Rangī Trust at the time of the missed deadlines but, nevertheless, indulgences were given and amended timetables put in place.

[12] Mr Halse now attributes much of the delay to his own default, but a default by a representative does not excuse a party, particularly where the default is repeated.<sup>4</sup> That Mr Halse is an advocate rather than a lawyer does not excuse his failings. He still holds a position of privilege before the Court, and the Court and Ngāti Rangī Trust, as well as Ms Reid, are entitled to expect Mr Halse to respect the processes of the Court.<sup>5</sup> Meeting Court-imposed deadlines for filing documents is a basic and readily understood requirement. The failures of Mr Halse, as Ms Reid’s representative, are inexcusable.

[13] The submission Ms Reid makes regarding the actions of the defendant is not accepted. It is one thing for the parties to engage on the content of a bundle of documents in the usual way, but it is something quite different for a party to simply disregard timetabling orders of the Court, as happened here.

4 At 253.

5 *H v RPW* [2020] NZEmpC 141 at [46].

### **Serious prejudice not established**

[14] The Court acknowledges absolutely the difficulties that delays cause. It recognises that involvement in litigation is a burden on parties and stressful for witnesses. It also can impact on the efficacy of the hearing as the recall of witnesses dims over time.<sup>6</sup>

[15] Ngāti Rangi Trust submits that abuse of process coupled with the anxiety of the defendant amounts to serious prejudice justifying the Court dismissing the proceeding.<sup>7</sup> Abuse of process may occur where there is contumelious conduct, including where there is a deliberate failure to comply with a specific order of the Court or where there is a series of separate inordinate and inexcusable delays in complete disregard of the rules of the Court and with full awareness of the consequences.<sup>8</sup> When dealing with such conduct, the Court will consider whether the failures were wilful or a consequence of bad management, capable of being answered in costs. An inference of wilfulness may be made where a party is fully aware of the consequences of a breach of the timetabling orders but has still breached those orders without any explanation of the failure to comply and no evidence of any attempt to comply with the orders.<sup>9</sup>

[16] What the chronology in this proceeding demonstrates is a cavalier approach by Ms Reid and/or Mr Halse who seem to adopt the view that, notwithstanding orders of the Court, they are entitled to set their own timeframes for filing the necessary documents.

[17] However, while the situation is clearly unsatisfactory, I am not persuaded that it is not the result of mismanagement by Mr Halse rather than a deliberate decision to disregard timetabling orders. I acknowledge that a “draft” brief of evidence was filed in June 2020 which, while insufficient, shows some recognition that Ms Reid needed to progress her case.

6 *New Zealand Industrial Gases Ltd v Andersons Ltd* [1970] NZLR 58 (CA) at 63.

7 *Grovit v Doctor* [1997] UKHL 13; [1997] 1 WLR 640 (HL) at 642.

8. *Parking New Zealand Ltd v ABD Trustees Ltd* HC Auckland CIV-2005-404-007397, 27 August 2007 at [23].

9 At [26].

[18] It may be a generous view, but in the absence of a clear warning to Ms Reid that her proceedings would be dismissed if she did not comply with the timetabling orders, I am not prepared to find that there has been contumelious conduct amounting to an abuse of process.

[19] No serious prejudice to Ngāti Rangi Trust is otherwise claimed or established and no doubt the delays to date will be reflected in any costs award on the substantive proceeding.

[20] Therefore, I am not prepared to dismiss the proceedings immediately.

### **Unless order made**

[21] As is apparent, there has been a history of failure to comply with Court orders for no good reason. Ngāti Rangi Trust is entitled to have this matter progressed and dealt with without any further delay. Although I recognise that an unless order is an order of last resort and, if breached, means Ms Reid cannot proceed with her claim, it is appropriate here.<sup>10</sup>

[22] I therefore order that the proceedings will be dismissed at 4 pm on Friday 26 March 2021, without the need for any further application by Ngāti Rangi Trust, unless, before that time, Ms Reid files and serves her briefs of evidence.

### **Ngāti Rangi Trust is entitled to costs on this application**

[23] In the circumstances, Ngāti Rangi Trust is entitled to costs on this application on a Category 2B basis.<sup>11</sup> The calculation of these costs ought to be able to be agreed between the parties and paid by Ms Reid to Ngāti Rangi Trust without further involvement of the Court. However, if agreement does not prove possible, Ngāti Rangi Trust may apply for costs by way of memorandum, to be filed and served by 4 pm on Friday 26 March 2021. Any submissions from Ms Reid in

response to the application are to be filed and served by 4 pm on Tuesday 13 April 2021 with any

10 *SM v SFDB* [\[2014\] NZCA 326](#), [\[2014\] 3 NZLR 494](#).

11 “Employment Court of New Zealand Practice Directions” <[www.employment.govt.nz](http://www.employment.govt.nz)> at No 16.

reply to those submissions to be filed and served by Ngāti Rangi Trust by 4 pm on Tuesday 20 April 2021. The application then would be dealt with on the papers.

J C Holden Judge

Judgment signed at 10 am on 25 February 2021

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