

[3] The Authority received submissions seeking costs on behalf of Bridgestone. Instead of filing submissions on the costs question, Mr Rudling applied for a stay of proceedings. This sought orders staying the enforcement of the Authority's earlier determination² and staying the determination of costs. Memoranda were received from the parties on the stay application.

[4] For Mr Rudling it was submitted that his right of challenge would be rendered nugatory, Bridgestone would not be prejudiced by a stay as there was no financial order in its favour and convention and the balance of convenience favoured granting a stay.

[5] Bridgestone opposed the stay application on the basis that the Authority usually determines costs where there is a challenge and there is no basis to depart from that practice.

[6] The making of an election to challenge the substantive determination does not operate as a stay of the substantive determination.³ The Authority's power to stay proceedings is set out in regulation 64 of the Employment Court Regulations 2000.

[7] I consider the factors outlined in *Assured Financial Peace Ltd v Pais*⁴. There appears to be nothing in the way of public interest or novelty in this proceeding.

Stay regarding substantive determination

[8] The earlier determination makes a finding regarding Mr Rudling's unjustified dismissal claim, namely that he was not unjustifiably dismissed. No orders were made other than regarding the time for filing costs submissions. Effectively there is nothing to enforce in the substantive determination.

[9] Mr Rudling has exercised his right to file a challenge to the substantive determination. I do not consider that his right to challenge will be rendered futile if the substantive determination is not stayed.

² [2019] NZERA 343

³ Section 180 of the Employment Relations Act 2000

⁴ *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [5].

Stay regarding costs

[10] The usual practice of the Authority is to determine costs even though a challenge has been filed. The Court's Practice Directions permits a costs challenge to be incorporated into the plaintiff's existing challenge to the Authority's substantive determination.⁵

[11] However, Mr Rudling has yet to file costs submissions. Bridgestone's cost submissions with attachments ran to some 25 pages. There would be some expense to Mr Rudling in his representative preparing a response.

[12] Submissions for Mr Rudling emphasised the financial hardship to him if a stay is not granted. Although no financial information was filed with the stay application, some evidence was received during the investigation meeting on the dismissal claim. I accept that funding the proceeding in Court may well be challenging for Mr Rudling. By contrast Bridgestone is a large multinational company. There is minimal prejudice to it if it is not able to pursue costs against Mr Rudling until the Court proceeding is completed.

[13] The Court is able to determine the costs for proceedings in the Authority in situations where costs are reserved but not determined by the Authority.⁶

[14] The balance favours Mr Rudling. Costs remain reserved. The application for a stay of the proceeding is granted.

Nicola Craig

Member of the Employment Relations Authority

⁵ Employment Court Practice Direction, last revised 14.12.18, direction 11

⁶ *Judea Tavern Limited v Jesson* [2017] NZEmpC 120