



# Employment Court of New Zealand

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## Sigglekow v Waikato District Health Board [2011] NZEmpC 156 (30 November 2011)

Last Updated: 11 December 2011

### IN THE EMPLOYMENT COURT AUCKLAND

#### [\[2011\] NZEmpC 156](#)

ARC 75/11

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 IAN SIGGLEKOW Plaintiff

AND WAIKATO DISTRICT HEALTH BOARD

Defendant

Hearing: 29 November 2011 (by telephone conference) (Heard at Auckland)

Appearances: Simon Scott, counsel for plaintiff

Gregory Peplow, advocate for defendant

Judgment: 30 November 2011

#### JUDGMENT OF JUDGE C INGLIS

[1] On 7 September 2011 the Employment Relations Authority issued a determination<sup>[1]</sup> in relation to Mr Sigglekow's claim against the Waikato District Health Board (the District Health Board) that he had been unjustifiably dismissed from his position as a registered nurse. The Authority found that Mr Sigglekow had been unjustifiably dismissed and awarded him \$3,461.55 by way of lost

remuneration and \$2,000 under [s 123\(1\)\(c\)\(i\)](#) of the [Employment Relations Act 2000](#)

(the Act). The Authority declined to reinstate Mr Sigglekow to his former position.

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[2] Mr Sigglekow filed a challenge in the Employment Court in respect of certain aspects of the Authority's determination, namely the decision to decline reinstatement, and the quantum of award for lost remuneration and compensation under [s 123\(1\)\(c\)\(i\)](#).

[3] The District Health Board has filed a statement of defence and cross- challenge. It seeks a stay of proceedings pending the hearing of the challenge and cross-challenge. The application for stay was the subject of a hearing conducted by telephone conference yesterday. I allowed further time for counsel for Mr Sigglekow to finalise an affidavit filed in opposition to the application. The affidavit was filed late in the day.

[4] The application for stay is advanced on the basis that if the District Health Board's cross-challenge succeeds, then it is

unlikely that Mr Sigglekow will be in a position to repay the sums ordered by the Authority. An affidavit has been filed in support of the application. Ms Aitchison, Service Manager for the Forensic Service (a division of the District Health Board), sets out her understanding that Mr Sigglekow is not employed, is no longer in receipt of any loss of earnings compensation from the Accident Compensation Corporation, and is unable to work as a nurse given that he does not hold an annual practising certificate. She suggests that Mr Sigglekow would be likely to use any money received to pay back his legal costs, that the District Health Board would be unlikely to be able to recover any money if its cross-challenge succeeded, and that subsequent enforcement action would be costly and would take money away from the Board's core services.

[5] Mr Sigglekow opposes the application. In his affidavit he traverses delays in the District Health Board bringing the application for stay, and the numerous requests made through his solicitor to the District Health Board for payment of the sums ordered by the Employment Relations Authority. He says that he is not impecunious, that he owns a house, and has an ability to repay the money if the cross-challenge succeeds (although he provides no details in that regard).

[6] [Section 180](#) of the Act provides that the making of an election under [s 179](#) does not operate as a stay of proceedings on the determination of the Authority

unless the Court, or the Authority, so orders. It follows that the orders of the Authority remain in full effect unless and until the Court sets them aside. That means that Mr Sigglekow is entitled to enforce the orders made by the Authority unless a stay of proceedings is granted.

[7] The power to grant a stay is discretionary. The sort of factors that may be relevant were traversed in *Assured Financial Peace Ltd v Pais*.<sup>[2]</sup> They include consideration of whether the successful party at first instance will be injuriously affected by a stay, whether the applicant's right of challenge will be rendered nugatory if no stay is granted, and the overall balance of convenience.

[8] While Mr Sigglekow owns his own home he is unemployed and appears to have no income stream, and no other assets. If payment was made to him the funds may well be dissipated given his financial position. It is likely that he would face real difficulty repaying the sums in question if the District Health Board succeeds in its cross-challenge, however motivated he might be to do so. That means that a successful cross-challenge may well be rendered nugatory given the District Health Board would be unlikely to be able to recover the money at all or in a timely manner.

[9] There is nothing in the evidence filed in opposition to the application which suggests that Mr Sigglekow would be injuriously affected by a stay of proceedings.

[10] I have regard to the apparent delays in pursuing the application for a stay. The Authority delivered its determination on 7 September 2011 and the statement of claim, challenging the Authority's determination, was received by the Court on 5

October 2011. The District Health Board's application for a stay was not filed until

25 November 2011, and not (it appears) before District Court action was commenced. The District Health Board had however written to Mr Sigglekow's lawyer on 23 November 2011 advising that it had serious concerns about his ability to pay and that it was proposing to retain the money ordered by the Authority,

together with interest, pending the outcome of the Employment Court proceedings.

[11] It is clear that the District Health Board has the sums available to meet the orders made by the Authority and, indeed, referred to the awards as "modest" in the course of submissions.

[12] Neither party advanced any argument in relation to the strength, or otherwise, of their respective challenges. I am not in a position, based on the limited material before me and at this very early stage, to express a view on this issue. It is however evident that the Authority member (Ms Larmer) adopted a thorough approach to the matters before her, and engaged in a comprehensive analysis of the facts and the law.

[13] Balancing all matters before me, and having particular regard to Mr Sigglekow's financial position, I am satisfied that it is appropriate to make an order for stay. Such an order will preserve the fund and the District Health Board will not be prejudiced if it succeeds in its cross-challenge. The stay will be granted on condition that the District Health Board makes payment into Court.

[14] There will be a stay of proceedings effective immediately and continuing until 4 pm on 6 December 2010. If the District Health Board has, by that time, paid into court the sum of \$5,461.55, the stay will continue in effect until further order of the Court. Otherwise the stay will lapse and Mr Sigglekow will be free to continue enforcement action.

[15] The order is subject to the following conditions:

(a) Payment into court shall be made by way of a bank cheque, solicitor's

trust account cheque, or bank transfer not subject to recourse.

(b) Once paid into court, the Registrar shall place the money into an interest bearing account. That money will be disbursed only by order of the Court.

(c) If payment into court is not made by 4 pm on 6 December 2011, subsequent payment will not revive the stay proceedings.

[16] Costs in relation to the application for stay of proceedings are reserved for consideration after the challenge and cross-challenge are decided.

C Inglis  
Judge

Judgment signed at 10.30 am on Wednesday 30 November 2011

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[\[1\]](#) [2011] NZERA Auckland 384.

[\[2\]](#) [2010] NZEmpC 50 at [\[5\]](#).

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