



Employment Court of New Zealand

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Teddy and Friends Limited v Page [2022] NZEmpC 45 (15 March 2022)

Last Updated: 19 March 2022

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2022\] NZEmpC 45](#)

EMPC 337/2021

IN THE MATTER OF	a challenge to a determination of the employment Relations Authority
AND IN THE MATTER OF	an application for leave to extend time to file pleadings
BETWEEN	TEDDY AND FRIENDS LIMITED Plaintiff
AND	PHILLIP PAGE Defendant

Hearing: On the papers

Appearances: A Schirnack and E Crowley, counsel for plaintiff E Hartdegen, counsel for defendant

Judgment: 15 March 2022

INTERLOCUTORY JUDGMENT OF JUDGE KATHRYN BECK

(Application for leave to extend time to file pleadings)

[1] These proceedings involve a challenge to a determination of the Employment Relations Authority which held that the defendant, Phillip Page, raised his personal grievance for unjustified dismissal from the plaintiff company within the statutory 90- day timeframe and ordered that the investigation meeting of Mr Page's personal grievance was to proceed as scheduled.¹

[2] The defendant applies to the Court for leave to file a statement of defence in relation to this matter.

¹ *Page v Teddy and Friends Ltd* [\[2021\] NZERA 406 \(Member Urlich\)](#).

TEDDY AND FRIENDS LIMITED v PHILLIP PAGE [\[2022\] NZEmpC 45](#) [15 March 2022]

[3] I treat the application as one to extend the timeframe for filing under [s 221\(c\)](#) of the [Employment Relations Act 2000](#). The application for leave is not opposed by the plaintiff but nor is it consented to.

[4] The approach to applications of this sort is well settled.² Relevant factors include:

- (a) why the challenge was not filed within the required time;
- (b) the length of the delay in filing;
- (c) any prejudice or hardship to any person;
- (d) the effect on rights and liabilities; and
- (e) the interests of justice.

[5] The statement of claim was filed on 24 September 2021 and served on 28 September 2021. A statement of defence

needed to be filed within 30 clear days of the date of service. No steps were taken by the defendant at all in the proceedings until 18 February 2022 when a draft statement of defence and application for leave to file it out of time were filed. In the meantime, a telephone directions conference had already been held and steps were being taken to arrange a hearing of the challenge.

[6] The application for leave is supported by an affidavit sworn by the defendant on 18 February 2022, together with a further affidavit which was filed on 25 February 2022. Both affidavits contain a significant amount of medical information relating to injuries which the defendant says occurred in the workplace and resulted in his dismissal. The essence of the affidavits is that the pain Mr Page has been suffering has impacted his ability to function and deal with day-to-day life. He says he was depressed, sleep-deprived and unable to cope. He says that when he was served with the statement of claim, he did not understand that the plaintiff could challenge the

2. See for example *Barry v Anoop Investments Ltd* [2008] ERNZ 204 (EmpC) at [20]; and *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38].

determination and was so unwell at the time that he did not even open the envelope. It was only later in December 2021, when his pain was more under control, he was coping better, and he was served with further documentation, that he became aware of these proceedings. It was at that time that he opened the envelope containing the statement of claim and realised that he would need to correspond with the Court. He appears to have then obtained legal advice and finally taken steps.

[7] While Mr Page's health concerns do not account for the whole of the delay, I am satisfied that the reasons for the delay have largely been explained.

[8] The delay is lengthy (over three months) but I do not consider that there has been any particular hardship or prejudice suffered by the plaintiff, other than it will now have a contested (as opposed to an uncontested) hearing. It still has to prove its case. Any prejudice can be dealt with by way of costs.

[9] If the application is not granted, the defendant will lose an opportunity to argue that the Authority's determination in his favour should be upheld. As it is a threshold issue, this could be highly prejudicial to him. Overall justice favours the granting of the application for the same reason. Further, it is desirable that the Court hear from both parties in considering the challenge.

[10] The grounds for the application have been made out and it is granted accordingly. The defendant must file and serve a statement of defence within seven days of the date of this judgment. A directions conference will then be convened at the earliest available date to progress the proceedings.

[11] Costs are reserved.

Kathryn Beck Judge

Judgment signed at 11.55 am on 15 March 2022