



# Employment Court of New Zealand

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## The Truck Company Limited v Hakaraia [2024] NZEmpC 191 (2 October 2024)

Last Updated: 7 October 2024

IN THE EMPLOYMENT COURT OF NEW ZEALAND WELLINGTON

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

[\[2024\] NZEmpC 191](#)

EMPC 324/2024

IN THE MATTER OF a challenge to a determination of the  
Employment Relations Authority  
AND IN THE MATTER OF an application for stay of execution  
AND IN THE MATTER OF an application for leave to extend  
time for filing a defence  
BETWEEN THE TRUCK COMPANY LIMITED  
Plaintiff  
AND TERRENCE HAKARAIA  
Defendant

Hearing: On the papers  
Appearances: A O'Connor, advocate for plaintiff  
V d'Or and J Corfe, counsel for  
defendant  
Judgment: 2 October 2024

### INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

**(Application for stay of execution) (Application for leave to extend time for filing a defence)**

#### Introduction

[1] The plaintiff company is pursuing a challenge to a determination of the Employment Relations Authority (the Authority) dated 26 July 2024.<sup>1</sup> The Authority found that Mr Hakaraia had been unjustifiably dismissed and disadvantaged and awarded remedies in his favour. The company (which took no part in the Authority's

<sup>1</sup> *Hakaraia v The Truck Company Ltd* [\[2024\] NZERA 454 \(Member Kennedy-Martin\)](#).

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investigation) has elected to challenge the Authority's determination, on a de novo basis. Pending the outcome of the challenge, the company seeks a stay of execution of the Authority's orders against it. That is opposed by the defendant.

[2] Both parties have filed memoranda and affidavits in support of and in opposition to the stay and have advised that they are content for the application to be dealt with on the papers.

[3] Also before the Court is an application for leave to extend time to file a statement of defence.

#### Application for stay of execution

[4] The principles applying to an application for a stay of execution are well established and can be summarised as follows.

[5] A challenge does not operate as a stay. The Court may, however, order a stay if satisfied that it is appropriate to do so. In assessing an application for a stay, the overarching consideration is the interests of justice. A range of factors are generally taken into account:<sup>2</sup>

(a) whether the challenge will be rendered ineffectual if a stay is not ordered;

(b) whether the challenge is brought and pursued in good faith;

(c) whether the successful party at first instance would be injuriously affected by a stay;

(d) the extent to which a stay would impact on third parties;

(e) the novelty and/or importance of the question involved;

*2 New Zealand Cards Ltd v Ramsay* [2013] NZCA 582 at [7]; *Assured Financial Peace Ltd v Pais*

[2010] NZEmpC 50 at [5].

(f) any public interest in the proceeding; and

(g) the overall balance of convenience.

[6] The crux of the plaintiff's application is its perilous financial position. In this regard it is said that the company is not in a position to pay the amount awarded against it if enforcement is pursued, so a stay is necessary to protect its position. Indeed the plaintiff describes its financial position as "dire". The company's submissions in this regard are supported by an affidavit.

[7] The company says that its challenge is with "absolute merit". It is further said that the defendant will not be injuriously affected by the stay because "he will feel much better having been able to see and hear the evidence of the company", and that the challenge raises issues of public interest. Finally, the company submits that the defendant is in a difficult financial position and if a stay is not granted it will make recovery difficult, in the event that the company succeeds on its challenge.

[8] I accept that the plaintiff company is in difficult financial circumstances. While not referred to on the company's behalf, I also accept that if no stay is granted the company's ability to exercise its right of challenge may be compromised. However, the flip side of the plaintiff's "dire" financial position is the significant potential prejudice placed on the defendant if a stay is granted and the company's financial position deteriorates.

[9] I have already noted that the company did not engage in the Authority's investigation. The defendant says that the sole purpose for the application for a stay, and the filing of a challenge, is to delay having to confront the implications of the Authority's determination. The plaintiff says that it did not engage in the Authority because it did not receive adequate notice of the Authority's investigation and its natural justice rights were breached. The Authority's determination sets out a number of steps taken to engage with the plaintiff and the circumstances in which it decided to proceed in the absence of it,<sup>3</sup> a step which the Act enables it to take.<sup>4</sup>

*3 Hakaraia*, above n 1, at [4]-[18].

*4 Employment Relations Act 2000, s 173(2).*

[10] Contrary to the plaintiff's submissions, I do not regard the challenge as raising any matters of public interest. While I accept that the matters at issue are important to both of the parties, there is nothing in the challenge that suggests that any broader interests are engaged.

[11] I am not satisfied, based on the material before the Court, that the company has laid an adequate foundation for its expressed concerns about the defendant's ability to repay any money paid to him in the event that the company succeeds on its challenge. It has previously been recognised that where such concerns are raised it is up to the applicant party to put sufficient information before the Court to support them.<sup>5</sup>

[12] I turn to consider the defendant's interests. I have already referred to the fact that, in light of the company's financial position, his interests appear to be in real danger of being undermined and that a stay would likely increase the prejudice he is currently confronting. Ordinarily a successful litigant in the Authority is entitled to the fruits of their success; a stay defers that. The challenge is at a very early stage and will likely not be heard until the first part of next year. That means that the defendant will not have access to the money awarded in his favour for some considerable time.

[13] The Court of Appeal has accepted that the apparent strength of an appeal can be relevant in determining an application for a stay but also indicate in the same judgment that the merits must be sufficiently obvious to be treated as a critical

factor.<sup>6</sup> In the present case the merits are not sufficiently obvious so as to be relevant, and I put them to one side.

[14] The central concern that arises on the plaintiff's application for a stay is its financial position. As I have said, I accept that declining the application for a stay will present difficulties for the company. However, it is necessary to weigh the company's interests with various other interests, including the interests of the defendant. I am not satisfied that it is in the interests of justice for a stay of execution to be ordered and

<sup>5</sup> *SP Blinds Ltd v Hogan* [2022] NZEmpC 104, [2022] ERNZ 416 at [11]- [12].

<sup>6</sup> *Keung v GBR Investment Ltd* [2010] NZCA 396, [2012 NZAR] 17 at [21]; see also *Kowhai Intermediate School Board of Trustees v West* [2022] NZEmpC 115 at 20] and [31]-[53]; *Oasis Network Inc v Douds* [2021] NZEmpC 170 at [56]- [57]; and *Pact Group v Robinson* [2023] NZEmpC 24 at [9].

decline to do so. That means that the Authority's determination remains enforceable against the plaintiff.

### Application for leave to extend time to file a statement of defence

[15] The 30-day timeframe for filing a statement of defence to the plaintiff's statement of claim expired on 26 September 2024. The statement of defence was not filed on time. On 27 September 2024 counsel for the defendant filed a memorandum explaining that the delay in filing was a result of inadvertent error. The file was referred to me for directions at that point. I indicated that I did not require a formal application to be advanced by the defendant and would treat the memorandum as an application for leave. I also indicated that, in light of the matters raised in counsel's memorandum, it was difficult to see what prejudice the plaintiff had experienced as a result of the brief delay, but indicated I would hear from the plaintiff if they wished to pursue the matter.

[16] Mr O'Connor, advocate for the plaintiff, advised the Court that there was a concern about the non-compliance; it was said that the prejudice to the plaintiff was "having to advise the Court in writing of yet another timetabling blunder and the legal framework to remedy the negligence".

[17] The Court has a discretion to grant an extension of time to take various steps, including to file a statement of defence.<sup>7</sup> The discretion is to be exercised in accordance with principle. The overarching consideration is the interests of justice. The usual factors that will be considered (where relevant) are the reasons for the omission to file within time; the length of the delay; any prejudice or hardship to any other person; the effect on the rights and liabilities of the parties; and subsequent events.<sup>8</sup>

[18] The delay in this case was a result of an oversight and was minimal. The Supreme Court has held, in such circumstances, an extension of time should generally

<sup>7</sup> [Employment Relations Act 2000, s 219](#).

<sup>8</sup> *Stevenson v Hato Paora College Trust Board* [2002] NZEmpC 39; [2002] 2 ERNZ 103 (EmpC) at [8].

be granted, desirably without opposition from the opposing party.<sup>9</sup> I cannot accept that the plaintiff was unduly prejudiced by the delay and am satisfied that it is in the interests of justice that an extension be granted to enable the defendant to defend the challenge. Accordingly, the statement of defence is accepted for filing.

### Next steps

[19] A telephone directions conference should be scheduled promptly so that the challenge can be progressed to an early hearing.

[20] Costs are reserved.

Christina Inglis Chief Judge

Judgment signed at 3.10 pm on 2 October 2024

<sup>9</sup> *Almond v Read* [2017] NZSC 70, [2017] 1 NZLR 801 at [37].