



Employment Court of New Zealand

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Thermo Fisher Scientific New Zealand v Dimoline [2021] NZEmpC 81 (2 June 2021)

Last Updated: 9 June 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2021\] NZEmpC 81](#)

EMPC 401/2020

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for evidence to be heard by audio-visual link
BETWEEN	THERMO FISHER SCIENTIFIC NEW ZEALAND Plaintiff
AND	RACHEL DIMOLINE Defendant

Hearing: On the papers

Appearances: J M Roberts, counsel for plaintiff
B Webster, counsel for
defendant

Judgment: 2 June 2021

INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN

(Application for evidence to be heard by audio-visual link)

[1] The plaintiff challenges a determination of the Employment Relations Authority.¹ The challenge is to be heard on 15 to 17 June 2021.

[2] The plaintiff has sought an order allowing one of its witnesses to give evidence remotely by audio-visual link (AVL), pursuant to the [Courts \(Remote Participation\) Act 2010](#).

¹ *Dimoline v Thermo Fisher Scientific New Zealand Ltd* [2020] NZERA 504 (Member Urlich).

THERMO FISHER SCIENTIFIC NEW ZEALAND v RACHEL DIMOLINE [\[2021\] NZEmpC 81](#) [2 June 2021]

[3] The order is sought in respect of Mr Jean Grant Steyn, a senior employee of the plaintiff. Mr Steyn is based in Melbourne, Australia and, as a result of the current COVID-19 situation, it is very unlikely Mr Steyn would be able to travel to New Zealand for the scheduled hearing.

[4] If the order is made, Mr Steyn will appear by way of a virtual meeting room and a connection test will be carried out before the hearing.

[5] The defendant does not oppose an order being made, provided Mr Steyn has access to the electronic bundle of documents. The plaintiff has said it will ensure this is the case.

[6] [Section 5](#) of the [Courts \(Remote Participation\) Act 2010](#) provides criteria to apply when such an application is made. Those criteria include the nature of the proceeding; the availability and quality of the technology that would be used; the

potential impact of the use of the technology on the effective maintenance of the rights of other parties to the proceeding, including the ability to assess the credibility of witnesses and the reliability of the evidence presented to the Court; and the level of contact with other participants.

[7] On a number of occasions, similar recent difficulties with travel to attend hearings have given rise to the Court granting leave to participate via AVL.²

[8] I am satisfied that, applying the criteria in [s 5](#), the grounds for an order have been made out by the plaintiff and it is appropriate for its witness's evidence to be given by AVL.

[9] Accordingly, an order allowing Mr Steyn to give evidence by AVL is made, subject to:

(a) the plaintiff complying with the conditions set out in the Guideline for Appearing by Audio-Visual Link, with the proviso that Mr Steyn is

2. *Concrete Structures (NZ) Ltd v Ward* [2020] NZEmpC 128; *AlKazaz v Enterprise IT Ltd (No 2)* [2020] NZEmpC 78; *Shah Enterprise NZ Ltd v A Labour Inspector of the Ministry of Business, Innovation and Employment* [2021] NZEmpC 65.

permitted to have and use an electronic device for the sole purpose of accessing the electronic bundle of documents.³

(b) the plaintiff supplying Mr Steyn with a copy of the Summary of Guidelines for a Witness Giving Evidence by Audio-Visual Link and advising the registry once this has been done.⁴

[10] Costs are reserved.

J C Holden Judge

Judgment signed at 4 pm on 2 June 2021

3. "Guideline for Appearing by Audio-Visual Link" <<https://employmentcourt.govt.nz/what-to-expect/before-a-hearing/#AVL>>.

4 "Summary of Guidelines for a Witness Giving Evidence by Audio-Visual Link"

<<https://employmentcourt.govt.nz/what-to-expect/during-a-hearing/#evidence>>.

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