



# Employment Court of New Zealand

You are here: [NZLII](#) >> [Databases](#) >> [Employment Court of New Zealand](#) >> [2021](#) >> [2021] NZEmpC 145

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

---

## WN v Auckland International Airport Limited [2021] NZEmpC 145 (7 September 2021)

Last Updated: 12 September 2021

### ORDER PROHIBITING PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF THE PLAINTIFF IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU

[\[2021\] NZEmpC 145](#)  
EMPC 308/2021

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	WN Plaintiff
AND	AUCKLAND INTERNATIONAL AIRPORT LIMITED Defendant

Hearing: On the papers  
Appearances: A Fechny, advocate for plaintiff K Dunn, counsel for defendant  
Judgment: 7 September 2021

INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

#### (Application for stay of proceedings)

[1] The plaintiff has filed a statement of claim in the Court challenging an alleged determination of the Employment Relations Authority. The claim is coupled with a number of interlocutory applications, being an application for urgency; an application for a stay; and an application for non-publication orders. During the course of a telephone conference with the parties' representatives this morning, I granted the application for urgency (which was not opposed); set the challenge down for a hearing

WN v AUCKLAND INTERNATIONAL AIRPORT LIMITED [\[2021\] NZEmpC 145](#) [7 September 2021]

(via telephone) on Monday 13 September 2021; granted interim non-publication orders in respect of the plaintiff (pending full argument at next week's challenge hearing); and allowed each party an opportunity to file additional material in support of, and in opposition to, the application for a stay. That material has now been filed.

[2] This judgment deals with the application for a stay of the Authority's direction to mediation, scheduled to occur tomorrow 8 September 2021. The parties agreed to the application being dealt with on the papers.

**Background**

[3] The plaintiff has received notice of termination of employment. Their employment will terminate on 30 September 2021. On 28 August 2021 the plaintiff filed a statement of problem in the Authority seeking orders in relation to the notified termination. The Authority issued a minute dated 1 September 2021, which records the Authority member's view that there was no statutory basis for granting the orders sought and that: "Should the applicant be dismissed as anticipated then an amended statement of problem may be filed seeking interim reinstatement at that point." The minute also references a direction to mediation.

[4] The challenge is directed at the statement about the Authority's power to grant the orders sought (which is being heard on an urgent basis on Monday 13 September 2021); the application for a stay relates to the direction to mediation (which is the subject of this judgment).

[5] The plaintiff is willing to attend mediation but says that, given the urgency, the available time is better spent preparing for the hearing. It is further said that, if the Authority had not erred in concluding that it did not have the power to deal with the plaintiff's claim on an interim orders basis, it would not have directed mediation in the circumstances.

[6] The defendant opposes the application.

### **Does the Court have the power to grant a stay in the present circumstances?**

[7] The defendant says that there are jurisdictional hurdles with the stay application. It is convenient to consider whether there is power to grant a stay in respect of the Authority's direction to mediation before turning to consider the factors that are generally considered relevant.

[8] The defendant says that reg 64(1) of the [Employment Court Regulations 2000](#) addresses the Court's power to stay proceedings; "proceedings" are a determination of the Authority; a direction to mediation is not a determination of the Authority for the purposes of reg 64, as that term is defined in [s 179](#) of the [Employment Relations Act 2000](#), and (in any event) it is in the interests of justice that mediation proceed as scheduled.

[9] The Authority may direct parties to mediation under [s 159](#) of the Act. That provision requires the Authority, in any matter coming before it for determination, to direct the parties to mediation before the Authority investigates the matter unless it is satisfied that mediation will not contribute constructively to resolving the matter; or will not in all of the circumstances, be in the public interest; or will undermine the urgent or interim nature of the proceedings; or will otherwise be impractical or inappropriate in the circumstances. Where a direction has been made, the parties must comply with it and attempt in good faith to reach an agreed settlement of their differences.

[10] I agree with Ms Fechny, representative for the plaintiff, that the way in which a document is described by the Authority is not determinative. A minute of the Authority can, as she points out, contain a determination which is susceptible to (for current purposes) a stay.<sup>1</sup> The key issue is substance, rather than form. I am prepared to accept, for present purposes and in the absence of full argument on the point within the timeframes available, that a direction to mediation can be the subject of a stay for the purposes of [s 159](#) (and [s 179](#)).

1. See for example *Morgan v Whanganui College Board of Trustees* [\[2013\] NZEmpC 55](#), [\[2013\] ERNZ 460](#).

### **Should a stay be granted?**

[11] In considering an application of this sort, the Court is ultimately guided by the interests of justice. The factors generally considered relevant are well established. In the context of the current application for a stay they include:<sup>2</sup>

- (a) if no stay is granted, whether the plaintiff's right to challenge will be rendered ineffectual;
- (b) whether the application for a stay is brought and prosecuted for good reasons and in good faith;
- (c) whether the defendant will be affected injuriously by a stay;
- (d) the effect on third parties;
- (e) the novelty and importance of the questions involved in the case;
- (f) the public interest in the proceedings; and
- (g) the overall balance of convenience.

[12] I now deal with each of these factors in turn.

[13] I do not accept that the plaintiff's challenge rights will be rendered ineffectual if no stay is granted, and I did not understand Ms Fechny to be submitting that they would be. Rather her point was that it was preferable, in terms of the urgency of the situation and other matters that are currently being dealt with, for the parties' energies to be focussed on the challenge rather than attending mediation. The hearing is on Monday, so six days away. I accept that there is a pressure on

time and resource but this needs to be weighed against the potential value of mediation – a point I return to.

[14] I accept that the application for a stay is being pursued in good faith.

2. *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [5]. See also *Dymoocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* [1999] NZHC 1324; (1999) 13 PRNZ 48 (HC) at [9].

[15] The only prejudice to the defendant in granting a stay which I can identify is the loss of an opportunity to attend mediation tomorrow.

[16] I am unable to discern any potential impact on third parties.

[17] Issues relating to the novelty and importance of the questions involved in the case are not relied on by either party and do not appear relevant; nor does it appear that the public interest is engaged in terms of disposing of this application.

[18] Standing back, I consider that the factors weigh against the grant of a stay. The objectives of the Act underscore the importance of mediation and its utility in resolving seemingly irreconcilable differences between parties to an employment relationship.<sup>3</sup> In this regard there are numerous times where parties consider that mediation would be a waste of their time and energy but attendance (with the assistance of a specialist mediator) turns out to be of value. I am in no position to predict the extent to which mediation may be effective between these parties, but I do consider that the potential benefits of attending mediation, and the timeframes within which it is to occur, outweigh the potential detriment identified on behalf of the plaintiff.

## Conclusion

[19] I consider it to be in the overall interests of justice that the application for a stay be declined.

[20] Costs are reserved.

Christina Inglis Chief Judge

Judgment signed at 4.05 pm on 7 September 2021

3 [Employment Relations Act 2000, s 3\(a\)\(v\)](#).