



# Employment Court of New Zealand

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## Whanganui District Health Board v Shepherd WC20/09 [2009] NZEmpC 71 (4 September 2009)

Last Updated: 12 September 2009

### IN THE EMPLOYMENT COURT

WELLINGTONWC 20/09WRC 26/09

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 WHANGANUI DISTRICT HEALTH BOARD

Plaintiff

AND ANTHONY BERNARD SHEPHERD

Defendant

Hearing: 4 September 2009

(Heard at Wellington)

Appearances: EJ Unsworth and SE Little, Counsel for Plaintiff

Peter Cranney and Anthea Connor

Judgment: 4 September 2009

### ORAL JUDGMENT OF CHIEF JUDGE GL COLGAN

[1] This application for stay of execution of the orders made by the Employment Relations Authority has been resolved sensibly with the assistance of counsel this morning. The following orders are made by consent as are the directions to a hearing.

[2] There will be a stay of execution of the Authority's orders on condition that Mr Shepherd will be paid the difference between his alternative earnings and the sum of \$60,000 per year, being a notional salary with the board, for the period from 4 August 2009 until the date of the Court's judgment on the challenge.

[3] Mr Shepherd will provide the board in a timely fashion with invoices for those differential amounts and will attach to the invoices pay slips from his current or any future employer evidencing his earnings. When the matter is finally resolved by the Court, the board reserves to itself the right to credit for sums paid under this arrangement to Mr Shepherd. Mr Shepherd, for his part, reserves his rights to claim for remuneration up to that period pursuant to the Authority's determination.

[4] By consent the board will pay to the Registrar of the Employment Court at Wellington the balance of monetary awards made by the Employment Relations Authority. Those sums are to be held in an interest bearing account to be paid out either consequent upon the judgment of the Court or otherwise with the written consent of counsel for both parties.

[5] I make a direction to early mediation with the assistance of the Department of Labour's mediation service.

[6] Document disclosure issues will be dealt with under the procedure contained in the [Employment Court Regulations 2000](#) and counsel are confident that no problems will arise under that process. If they do, the grant of leave that I will make at the end of this judgment will allow the Court to determine any other interlocutory issues including disclosure if the parties cannot resolve these between themselves.

[7] The plaintiff will present its case first followed by the defendant. The plaintiff anticipates having up to 10 witnesses, with the defendant having four to five witnesses. It is agreed that between 3 and 5 days may be needed for the hearing which will be in Wanganui and probably in the Maori Land Court there. The hearing will begin at 9.30 am on Monday 30 November and continue during that week for as long as may be needed.

[8] The evidence-in-chief of all witnesses will be in the form of affidavits filed and served in the first instance. Additional copies of those affidavits in Microsoft Word electronic format should be provided to the Registrar to assist in the production of a contemporaneous transcript of the evidence.

[9] The plaintiff will file and serve its affidavits of evidence-in-chief no later than 28 days before the start of the trial with the defendant doing likewise no later than 14 days before the start of the trial.

[10] The parties will rely on the bundles of documents used in the Employment Relations Authority which are attached to the affidavit of Fleur Fitzsimons. If there are further documents on which either party wishes to rely, then a third volume can be lodged with the Registrar before the hearing.

[11] To save duplication of documents where affidavits are filed, it will be sufficient for deponents of affidavits to refer to a document by number in the common bundle rather than annexing the document to the affidavit.

[12] I make an order under clause 12 of Schedule 3 to the [Employment Relations Act 2000](#) that there is to be no publication of the name or other details that might identify the patient the subject of the proceeding, or any other patient whose identity might emerge in the course of the hearing.

[13] I reserve leave for either party to apply for any further orders or directions on reasonable notice.

[14] Costs will be reserved to be dealt with at the same time as costs may be dealt with following the substantive hearing.

GL Colgan

Chief Judge

Judgment delivered orally at 11.30 am on Friday 4 September 2009