

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**2024 NZEmpC 108  
EMPC 473/2023**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application to participate at a hearing via audio-visual link
BETWEEN	<b>BRENDAN FORD</b> Plaintiff
AND	<b>HENRY BROWN AND COMPANY LIMITED</b> Defendant

Hearing: On the papers

Appearances: S Greening and K Hudson, counsel for plaintiff  
K Cooper, counsel for defendant

Judgment: 18 June 2024

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**INTERLOCUTORY JUDGMENT OF  
CHIEF JUDGE CHRISTINA INGLIS**  
**(Application to participate at a hearing via audio-visual link)**

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[1] This matter is set down for two days, commencing 1 July 2024. An application has been made by the defendant for leave for two of its witnesses to participate at the hearing by audio-visual link (AVL). The plaintiff is not opposed to the orders sought. Despite the fact that there is no opposition, the Court must be satisfied that it is appropriate that the orders be made.

[2] The ordinary way for a witness to give evidence in a civil proceeding is orally in a courtroom in the presence of the Judge, the parties and the public.<sup>1</sup> There is no presumption in favour of giving evidence in the ordinary way.<sup>2</sup>

[3] The Court may allow the use of AVL in civil proceedings, including for the appearance of a party and witnesses. Before doing so, it must take into account whether or not the other party consents to the use of AVL and must have regard to the criteria in s 5 of the Courts (Remote Participation) Act 2010.<sup>3</sup> The criteria are:<sup>4</sup>

- (a) the nature of the proceeding;
- (b) the availability and quality of the technology that is to be used;
- (c) the potential impact of the use of the technology on the effective maintenance of the rights of the other parties to the proceeding, including –
  - (i) the ability to assess the credibility of witnesses and the reliability of evidence presented to the Court; and
  - (ii) the level of contact with other participants;
- (d) any other relevant matters.

[4] The proceedings relate to a non-de novo challenge to a determination of the Employment Relations Authority.<sup>5</sup> It concerns whether Mr Ford was unjustifiably dismissed – the Authority had found that he was not; he contends that he was. Central to the plaintiff’s challenge is an allegation that the Authority erred in its interpretation and application of a clause in Mr Ford’s employment agreement (which the company had relied on in dismissing him) and erred in its finding that the company had followed

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<sup>1</sup> See High Court Rules 2016, r 9.51; and Evidence Act 2006, s 83.

<sup>2</sup> *Wealleans v R* [2015] NZCA 353 at [34]; *R v O (CA443/12)* [2012] NZCA 475 at [37]; and *R v Shone* [2008] NZCA 313 at [28].

<sup>3</sup> Courts (Remote Participation) Act 2010, s 7.

<sup>4</sup> Courts (Remote Participation) Act 2010, s 5.

<sup>5</sup> *Ford v Henry Brown and Company Ltd* [2023] NZERA 716.

a fair process leading up to the dismissal. Evidence will be given at the hearing directed at those alleged errors.

[5] The company intends to call four witnesses, two of whom are described as key witnesses, and two whose evidence will be brief and confined. The current application is directed at the latter witnesses. Both witnesses reside out of Auckland (the location where the hearing will take place). One of the witnesses (who lives in Christchurch) would have to make arrangements to take time off work to travel to Auckland; the other witness (whose intended evidence is extremely short and confined to one matter) would need to travel from Hamilton. Counsel for the defendant submits that giving evidence in person would be disruptive in terms of time and expense.

[6] The plaintiff does not oppose the application.

[7] There is nothing about the nature of the proceedings which suggests that the giving of evidence via AVL would be unsuitable. Appropriate AVL facilities are available. While I have considered the potential impact of AVL on the ability to assess credibility and the reliability of evidence presented, those considerations do not warrant an in person appearance in this case.<sup>6</sup> I agree that giving evidence in person would be disproportionately disruptive.

[8] In the circumstances, the application for leave for the identified witnesses to appear at the hearing and give evidence by AVL is granted.

[9] Counsel for the defendant is to ensure that the agreed bundle of documents is available to the witnesses when the hearing takes place. Counsel must also ensure that each witness is provided with a copy of the Court's Guideline for Appearing by Audio-Visual Link.<sup>7</sup>

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<sup>6</sup> *Deutsche Finance New Zealand Ltd v Commissioner of Inland Revenue* (2007) 18 PRNZ 710 (HC) at [37].

<sup>7</sup> Employment Court "Guideline for Appearing by Audio-Visual Link, Including in Virtual Hearings" (February 2022) <<https://employmentcourt.govt.nz/>>.

[10] I do not understand any issue of costs to arise.

Christina Inglis  
Chief Judge

Judgment signed at 11.55 am on 18 June 2024