

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

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

**[2024] NZEmpC 118
EMPC 381/2023**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF an application to appear via audio visual
link

BETWEEN THE CHIEF OF NEW ZEALAND
DEFENCE FORCE
Plaintiff

AND NEW ZEALAND PUBLIC SERVICE
ASSOCIATION TE PŪKENGĀ HERE
TIKANGA MAHI INCORPORATED
Defendant

Hearing: On the papers

Appearances: J Boyle, counsel for plaintiff
P Cranney, counsel for defendant

Judgment: 3 July 2024

**INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH
(Application to appear via audio visual link)**

[1] This proceeding is set down to be heard in Wellington beginning on 13 August 2024. The plaintiff has now applied for leave to have the evidence of one witness, Karamea Dorset, given by audio visual link (AVL). The application is made in accordance with the Courts (Remote Participation) Act 2010 (the Act).

[2] The basis for the application is that Ms Dorset, who is no longer employed by the plaintiff, lives in Perth, Western Australia. The application is premised on avoiding

the likely cost and travel time that would be incurred if Ms Dorset was required to travel to Wellington to give evidence. The application is consented to by the defendant.

[3] The ordinary way in which a witness gives evidence in a civil proceeding is orally, in a courtroom in the presence of the Judge, the parties and the public.¹ There is, however, no presumption in favour of giving evidence in that way.²

[4] The Court may allow evidence to be given by AVL in a civil proceeding. In making such a decision the Court must have regard to the criteria in s 5 of the Act which are:

- (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 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

[5] The application proposes that, if Ms Dorset participates by AVL, she is able to take part in a test prior to the hearing. The plaintiff also proposes that she will have access to the electronic bundle of documents while giving her evidence.

¹ See for comparison, High Court Rules 2016, r 9.51 and Evidence Act 2006, s 83.

² *Wealleans v R* [2015] NZCA 353; *R v O* (CA443/12) [2012] NZCA 475.

[6] I am satisfied that the criteria in s 5 are met. The time and cost involved in expecting Ms Dorset to travel from Australia to New Zealand would be an unreasonable imposition. There are no factors which count against the application. There is nothing about the nature of the proceeding which suggests that the use of AVL would be unsuitable.

[7] The application for Ms Dorset's evidence by AVL is granted. Counsel for the plaintiff is to ensure that the agreed bundle of documents is available to Ms Dorset. Counsel must also ensure that the witness is provided with a copy of the Court's *Guideline for Appearing by Audio-Visual Link, Including in Virtual Hearings*.³

[8] There are no issues as to costs.

K G Smith
Judge

Judgment signed at 11.40 am on 3 July 2024

³ Employment Court "Guideline for Appearing by Audio-Visual Link, Including in Virtual Hearings" (February 2022) <https://employmentcourt.govt.nz/>.