

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

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2025] NZEmpC 115
EMPC 54/2024**

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

BETWEEN OTIRA STAGECOACH HOTEL LIMITED
 Plaintiff

AND JOHN CHARLES WRIGHT
 Defendant

Hearing: 9 June 2025
 (Heard at Christchurch)

Appearances: L Rowntree, agent for plaintiff
 J Kaye, counsel for defendant

Judgment: 9 June 2025

ORAL JUDGMENT OF JUDGE K G SMITH

[1] Otira Stagecoach Hotel Ltd employed John Wright as a cook/duty manager. Mr Wright claimed that he was dismissed by Otira Stagecoach following an incident in the hotel on 14 November 2018. He claimed that he was assaulted by Otira Stagecoach’s shareholder and director, Lester Rowntree.

[2] The alleged assault formed the basis of Mr Wright’s claim of constructive dismissal in the Employment Relations Authority. The Authority agreed that Mr Wright was unjustifiably dismissed and ordered Otira Stagecoach to pay him compensation.¹

¹ *Wright v Otira Stagecoach Hotel Ltd* [2024] NZERA 29.

[3] Otira Stagecoach was ordered to pay Mr Wight \$34,000 under s 123(1)(c) of the Employment Relations Act 2000 (the Act), and lost remuneration of \$8,424 under s 123(1)(b) of the Act, plus \$252 for a KiwiSaver contribution.

[4] The Authority subsequently ordered Otira Stagecoach to pay costs of the investigation to Mr Wright of \$7,500.²

[5] Otira Stagecoach has challenged the substantive determination. The company's statement of claim is extremely specific and is targeted at only one issue: a claim that an assault did not take place. The pleading acknowledged that Mr Wright suffered some injuries at the hotel in November 2018, but the company pleaded that they resulted from Mr Wright accidentally falling.

[6] While Otira Stagecoach sought to set aside the Authority's determination, it expressly did not challenge how the compensatory awards were calculated. That view was repeated by Mr Rowntree when he gave evidence today.

[7] A difficulty confronting this challenge is that on 1 June 2022, Mr Rowntree was found guilty of assaulting Mr Wright by District Court Judge Rollo after a defended hearing in the District Court at Greymouth. Mr Rowntree was initially charged with assault with intent to injure. Judge Rollo decided that the prosecution had proved beyond reasonable doubt that Mr Rowntree assaulted Mr Wright by banging his head into the glass top of a Tip Top freezer in the junk room at the hotel and pushing him aside, causing him to fall to the floor.

[8] Judge Rollo was not satisfied that the prosecution had established that the actions which were found to have taken place amounted to acting with intent to injure. However, the Judge was satisfied that an assault had occurred. The charge was amended to one of common assault under s 196 of the Crimes Act 1961. Mr Rowntree was found guilty of the amended charge.

² *Wright v Otira Stagecoach Hotel Ltd* [2024] NZERA 113.

[9] Judge Rollo sentenced Mr Rowntree on 3 June 2022. Mr Rowntree was discharged without conviction but was ordered to pay reparation of \$2,500 to Mr Wright.

[10] Judge Rollo's judgment that an assault was committed has been a central part of the management of this proceeding more or less from the beginning. At a conference in July last year, I raised with counsel then acting for Otira Stagecoach the fact that Mr Rowntree was found guilty of assaulting Mr Wright. During the conference counsel confirmed that the company's challenge raised only one issue, namely whether Mr Wright was assaulted by Mr Rowntree, which I recorded in a minute as a proposition inconsistent with the District Court Judge's decision. Also raised with counsel, and recorded in my minute, was whether the plaintiff's challenge to the Authority's determination was an impermissible collateral attack on the Judge's decision.

[11] While counsel was aware of the difficulties facing the challenge, given the finding of guilt, and acknowledging that it might be an impediment to the company's case, he said it may be capable of being overcome. That was an oblique reference to other evidence the plaintiff might produce at the hearing. Counsel drew to the Court's attention that Mr Rowntree was discharged under s 106 of the Sentencing Act 2002 which, it seemed at the time, the plaintiff company considered was in some way relevant to not taking into account the District Court Judge's decision.

[12] For completeness, I should also mention that during this conference Mr Kaye (who acts for Mr Wright) discussed the possibility of applying to strike out the plaintiff's claim. As it happened, no application of that sort was made.

[13] As anticipated by the statement of claim, the evidence from Mr Rowntree in support of the challenge was directed entirely at establishing that he did not assault Mr Wright. In Mr Rowntree's brief of evidence filed before the hearing, and adopted by him during it, he expressly referred to his belief that there were grounds for a retrial, meaning of the charge he was found guilty of by Judge Rollo. Passages from Judge Rollo's judgment were referred to, specifically about what happened in a room of the

hotel where Mr Wright said he was assaulted and where Mr Rowntree maintained throughout he was not assaulted.

[14] Today I also received and admitted into evidence a significant volume of material produced by Mr Rowntree that was not filed in advance as required by case management directions. It included photographs taken very recently of the room where Mr Wright said he was assaulted and where Mr Rowntree maintained no assault occurred. There were some photographs of the hotel kitchen, the freezer, Mr Rowntree near the freezer, and the exterior of the hotel.

[15] I also received from Mr Rowntree some medical information about Mr Wright which he maintained was relevant, particularly to a claim advanced by him that Mr Wright was intoxicated at the time of the incident. As I understand this aspect of the plaintiff's case, this evidence was designed to show that there was a reason for Mr Wright having fallen, aside from the assault that was alleged to have occurred. And I also received a copy of the second statement of evidence Mr Wright relied on in the Authority and of a report by Dr Olive Webb who is a registered clinical psychologist. In relation to Dr Webb's statement, Mr Rowntree advised me that it was relevant to the prospect of pursuing an appeal, presumably in the High Court, arising from Judge Rollo's decision.

[16] I have also received evidence from Robin Nicholl. Mr Nicholl is a retired senior police officer who is now a licensed private investigator. In March 2024, he was instructed by Mr Rowntree to investigate the scene. He produced evidence highly critical of the quality of the police investigation that led to the charge, and the subsequent judgment.

[17] It is apparent from all of the company's evidence that what it wanted to achieve was to revisit the decision made by Judge Rollo in June 2022 and to obtain a judgment from this Court that there was, in fact, no assault.

[18] In the District Court, and again in this Court, Mr Wright gave evidence that he sustained an injury to his head and suffered a broken pelvis in the assault. Mr Rowntree's evidence was that information had come to hand that Mr Wright had

broken bones in falls in other locations, such as other hotels or places where he was employed, which I think was intended to show that where Mr Wright might have previously said he had not suffered a broken bone, that statement was untruthful. It appears this evidence was intended to undermine the conclusion that there was an assault.

[19] As well as discussing evidence given by other witnesses, or that might have been given by other witnesses in the District Court, Mr Rowntree relied on being discharged without conviction under s 106 of the Sentencing Act. He said that the discharge showed Judge Rollo was unsure of his (meaning Mr Rowntree's) "way of thinking" and that the Judge "got it wrong", presumably about the judgment concluding that the charge had been made out and finding him guilty. In his evidence-in-chief, references to Judge Rollo's judgment were followed by a statement that a new trial is a fair and just outcome because Mr Rowntree should never have been tried in the first place.

[20] Not surprisingly, Mr Wright's evidence is diametrically opposed. He said that he was assaulted by Mr Rowntree and that the assault led directly to the cessation of his employment. He pointed out that after he left the Otira Stagecoach premises for medical treatment, he never went back and, apart from holiday pay eventually being paid, he was no longer paid any salary or wage.

[21] Section 106(1) and (2) of the Sentencing Act provides:

106 Discharge without conviction

- (1) If a person who is charged with an offence is found guilty or pleads guilty, the court may discharge the offender without conviction, unless by any enactment applicable to the offence the court is required to impose a minimum sentence.
- (2) A discharge under this section is deemed to be an acquittal.

...

[22] It seems that Mr Rowntree's approach to this challenge places weight on the discharge being deemed to be an acquittal and also on his contention that he did not assault Mr Wright. While the discharge is deemed to be an acquittal under s 106, that does not mean, in fact, that the conclusions reached by Judge Rollo must be put aside or that in some way they have evaporated.

[23] Judge Rollo considered almost exactly the same evidence now provided to me by Mr Rowntree and Mr Wright. He reached a conclusion that an assault had taken place on the criminal standard of beyond reasonable doubt.

[24] I agree with Mr Kaye's submission that this challenge does not traverse new ground, as indicated by Otira Stagecoach's previous counsel was likely to be the case, but revisits old ground and invites a different outcome. Looked at in that way, this challenge is an impermissible collateral attack on Judge Rollo's judgment and it is, in that sense, an abuse of process.

[25] There has already been a finding of guilt beyond reasonable doubt and it would, in my view, be inappropriate for me to attempt to assess the evidence to establish one way or the other my view about what occurred, and to do so on the balance of probabilities. The issue was decided by Judge Rollo. If Mr Rowntree wants to have the judgment reconsidered, then the appropriate way to do that is by some sort of application to the District Court, or possibly in the High Court.

[26] It follows from these remarks that I have accepted that the Authority was right to conclude that there was a constructive dismissal consequent on Mr Wright having been assaulted at work.

Outcome

[27] The challenge is unsuccessful and it is dismissed. Previously, by consent, I granted a stay of the Authority's determination and funds are being held by the Registrar of this Court. One result of this decision is that the stay is now set aside and the funds are to be paid by the Registrar to Mr Wright or in any way that he directs.

[28] Before beginning this judgment, I asked Mr Kaye about the stay judgment issued by consent on 5 July 2024 because it was for a greater sum than the total amounts of the Authority awards when they are added together. The amount of the Authority's compensatory orders and costs comes to \$50,176. Mr Kaye confirmed that the correct amount is \$50,176. The amount being held by the Registrar is \$53,119.74. The Registrar is to pay to Mr Wright \$50,176 and the balance is to be returned to the company.

[29] Mr Wright is entitled to costs. If agreement cannot be reached memoranda may be filed.

K G Smith
Judge

Judgment delivered orally at 4.23 pm on 9 June 2025