

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

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

**[2025] NZEmpC 143
EMPC 131/2025**

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

AND IN THE MATTER OF an application for a stay of execution

BETWEEN EMPLOYMENT SERVICES LIMITED
Plaintiff

AND FRANK RESINK
Defendant

Hearing: On the papers

Appearances: Y Hope, counsel for plaintiff
M R Gibson, counsel for defendant

Judgment: 14 July 2025

**INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH
(Application for a stay of execution)**

[1] Frank Resink was successful in his claims against Employment Services Ltd in the Employment Relations Authority.¹

[2] The Authority held that Mr Resink was unjustifiably dismissed by Employment Services and awarded him compensation. The company was ordered to pay him \$15,000 under s 123(1)(c)(i) of the Employment Relations Act 2000 and \$17,500.08 gross for lost earnings.

¹ *Resink v Employment Services Ltd* [2025] NZERA 104.

[3] Employment Services challenged the determination seeking to set it aside. Separately it applied for a stay of execution of the Authority's orders pending the outcome of the challenge. The application for a stay is opposed by Mr Resink.

Applications for a stay

[4] There is no dispute about the approach to deciding an application for a stay which is, in any event, well established. Employment Services' challenge does not operate as a stay of the Authority's determination.² However, the Court has a discretionary power to order the determination to be stayed.³ The overarching consideration is whether granting a stay is in the interests of justice.

[5] Exercising the discretion is usually informed by factors such as:

- (a) whether the challenge will be rendered ineffectual if the stay is not granted;
- (b) whether the challenge is brought and pursued in good faith;
- (c) whether the successful party at first instance will be injuriously affected by the stay;
- (d) the extent of any impact of granting a stay on third parties;
- (e) the novelty and/or importance of the questions involved in the challenge;
- (f) the public interest in the proceeding; and
- (g) the overall balance of convenience.

[6] In assessing an application for a stay, the competing considerations of the parties must be taken into account; the successful party at first instance is entitled to

² Employment Relations Act 2000, s 180.

³ Employment Court Regulations 2000, reg 64.

the benefit of that decision, but the unsuccessful party's ability to pursue a challenge should not be unreasonably fettered.⁴

[7] In cases where what is primarily in issue is monetary compensation the balance between those competing interests may sometimes be achieved by granting a stay subject to a condition that money is paid to a stakeholder to be held on trust or, alternatively, is paid to the Registrar of this Court to be held pending any order for its distribution.⁵

The application

[8] Employment Services' grounds supporting the application were an amalgamation of the legal test to apply and the company's reasons for applying.

[9] Two concerns appeared to dominate the application. The first of them was an unsupported claim that Mr Resink may be unable to pay back the amounts ordered by the Authority if the challenge succeeds. The second and seemingly related concern was that the money is needed by the company as working capital.

[10] The application was supported by a very brief affidavit from Matthew Jones, the company's managing director. Mr Jones stated his opinion that the Authority's decision was flawed and mentioned, but did not describe, new evidence he considered would have a significant impact on the challenge. Dealing specifically with this application, he went on to say that if the company was to pay Mr Resink it would be deprived of working capital and a situation would be created where, if the challenge succeeds, the money would need to be recovered from him.

[11] Mr Jones stated his further opinion that there would be no disadvantage or injustice to Mr Resink to wait until the Court has heard the matter. Conversely, he considered there would be a significant injustice to the company if it was required to pay before the challenge is heard.

⁴ *Duncan v Osborne Building Ltd* (1992) 6 PRNZ 85 (CA).

⁵ It is common for the Registrar to hold funds in an interest-bearing account.

[12] Mr Resink's opposition to the application was succinct. He pleaded that, as the successful party in the Authority, he is entitled to the benefit of the determination. His affidavit described in some detail his property and financial resources to show his ability to repay the money if Employment Services' challenge succeeds.

Analysis

[13] Ms Hope, counsel for Employment Services, traversed each of the factors normally taken into account referred to earlier. That said, her submissions only briefly touched on the company's claims about possible repayment difficulties and the impact on the company's working capital.

[14] The starting point for this evaluation is that Mr Resink is entitled to the benefit of the Authority's determination unless, in the interests of justice, there is some reason to deprive him of it pending the outcome of the challenge.

[15] The first assessment factor referred to earlier, about the challenge being rendered ineffectual without a stay, is a way of asking whether there is a risk that the challenge will be futile if money changes hands but may not be recoverable. This ground is the lynchpin of the application. It explains why Mr Jones referred to doubts about Mr Resink's financial resources and mentioned the company's need for working capital, although he said very little on the latter subject.

[16] The complete answer to Employment Services' concerns was provided by Mr Resink. It is not necessary to canvass that evidence in any detail. It is sufficient to record that he has an interest in a mortgage-free property in Christchurch the equity in which is many times the amount ordered by the Authority. Mr Resink has been forced to break into financial investments he was otherwise putting towards retirement to meet his related legal expenses, but there are still funds available from that asset that could go towards repayment if required. It follows that there is no evidential basis to conclude that the challenge would be rendered ineffectual if the company must pay Mr Resink before the challenge is decided.

[17] No weight can be placed on the company's statement about the need for working capital, because it was not supported by any explanation justifying why that

need should displace Mr Resink's present entitlement. I note in passing that this part of the application is inconsistent with Employment Service's proposal to pay the money into Court.

[18] The other factors normally assessed in applications for a stay are insufficient to displace my conclusion about the challenge not becoming ineffectual. I accept that the challenge is probably brought in good faith and agree with Ms Hope that there are no adversely affected third parties or public interest that might be relevant. There is, additionally, nothing novel or significant in this litigation that would affect the application for a stay. All of those factors are accordingly neutral in this assessment.

[19] I am satisfied that Mr Resink has the resources available to repay Employment Services if the challenge succeeds. It follows that the balance of convenience heavily favours him.

Conclusion

[20] The application for a stay is unsuccessful and it is dismissed.

[21] Mr Resink is entitled to costs. The parties are encouraged to reach agreement about them but if it is not possible memoranda may be filed.

K G Smith
Judge

Judgment signed at 12 pm on 14 July 2025