IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKAURAU

[2025] NZEmpC 187
EMPC 494/2024

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	KAMAHL SANTAMARIA Plaintiff
AND	TELEVISION NEW ZEALAND LIMITED Defendant

EMPC 202/2025

IN THE MATTER OF	proceedings removed from the Employment Relations Authority
AND IN THE MATTER OF	an application to consolidate proceedings
BETWEEN	KAMAHL SANTAMARIA Plaintiff
AND	TELEVISION NEW ZEALAND LIMITED Defendant

Hearing:	23 July 2025 (Heard at Christchurch via Audio Visual Link)
Appearances:	D Kalderimis KC and K Jones, counsel for plaintiff M Dew KC, E Peterson and N Ram, counsel for defendant
Judgment:	27 August 2025

INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH
(Application to consolidate proceedings)

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[1] This application seeks to consolidate three proceedings all emerging from a common set of problems.

[2] Kamahl Santamaria was employed by Television New Zealand Ltd as a presenter on the morning television show "Breakfast". On 28 May 2022, Mr Santamaria and TVNZ signed a settlement agreement pursuant to s 149 of the Employment Relations Act 2000 (the Act), recording the terms on which his employment would end. For present purposes it is sufficient to note that the settlement agreement provided that:

(a) Mr Santamaria resigned and his employment would end on 31 May 2022; and

(b) it was in full and final settlement of all claims either party may have against the other arising out of Mr Santamaria's employment including its cessation.

[3] The settlement agreement was signed by a mediator employed by the Chief Executive of the Ministry of Business, Innovation and Employment on 2 June 2022. The agreement was endorsed with confirmation that before it was signed the mediator explained to the parties the effects of ss 148A, 149(1) and 149(3) of the Act.

[4] Disputes have arisen over:

(a) what the settlement agreement means;

(b) mutual allegations of breaches of the settlement agreement; and

(c) alleged breaches by TVNZ of employment-related duties it is claimed the company continued to owe to Mr Santamaria between the date when the settlement agreement was signed and when his employment ended.

[5] Some context is required to explain how three proceedings are before the Court.

[6] In 2024, Mr Santamaria lodged a statement of problem in the Employment Relations Authority making several claims against TVNZ. Those claims involved allegations that TVNZ breached the settlement agreement and certain duties owed to him as an employee.

[7] The Authority issued a decision on 18 November 2024, which it described as a preliminary determination.[1] The determination dealt with whether the Authority had jurisdiction over claims by Mr Santamaria that arose after the parties signed the settlement agreement, that is in the period between 28 May and 31 May 2022. The Authority determined that his claims for what was alleged to have happened during that time were barred by the settlement agreement.[2]

[8] The determination did not resolve all of the claims the Authority was considering. In its second determination the remaining matters between Mr Santamaria and TVNZ were removed to the Court.[3]

The proceedings before the Court

[9] Mr Santamaria challenged the November 2024 determination and elected a full rehearing of the whole matter. That challenge is EMPC 494/2024. It is confined to seeking to set aside the conclusion that some of his claims were barred by the settlement agreement. Mr Santamaria was obliged to file this challenge to preserve his appeal rights while awaiting the outcome of the Authority's second determination about removing the remaining matters to the Court.

[10] TVNZ filed a statement of defence in EMPC 494/2024, supporting the Authority's conclusion. This challenge is currently timetabled to a hearing scheduled to begin on 21 October 2025.

[11] The proceedings in EMPC 202/2025 arose from the second determination. When a matter is removed to the Court there is no mechanism transferring the pleadings in the Authority, or documents that may have been filed there. In practice, the parties are requested to file new pleadings to address the matters that are removed.

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1 *Santamaria v Television New Zealand Ltd* [2024] NZERA 681.
2 At [136].
3 *Santamaria v Television New Zealand Ltd* [2025] NZERA 256.

[12] Mr Santamaria filed a statement of claim about the matters that were removed, pleading nine alleged breaches by TVNZ. He sought declarations, penalties for any breach found to be continuing and, in relation to two of the alleged breaches, general damages pursuant to s 123(1)(c) of the Act, stigma damages, special damages and costs. TVNZ has filed a statement of defence denying any breaches occurred.

[13] TVNZ also filed a statement of claim about the matters removed by the Authority. It pleaded that Mr Santamaria breached the settlement agreement and sought declarations to that effect, penalties, a compliance order and costs. This proceeding is also noted as EMPC 202/2025 although it is presently being treated as in essence a counterclaim.

The consolidation application

[14] Mr Santamaria applied to consolidate the proceedings. If that order is granted, it follows the hearing of EMPC 494/2024 scheduled for October 2025 will be vacated.

[15] The grounds of the application are essentially based on the interests of justice being served by the proceedings being heard together.

[16] The application listed eight factors to support it. The first of them was that the proceedings are fractional parts of the same dispute. That was followed by pleadings that consolidation would be efficient, informative, cost conscious, timely, sensible, practicable and just.

[17] The application claimed that consolidation is sensible because there is no prospect that the outcome of the challenge in EMPC 494/2024 will dispose of all matters between the parties. Consolidation was pleaded as being practical and just because no other parties are affected by it and the claims are best understood when everything is considered together.

[18] TVNZ opposed consolidation except for "administrative purposes". This opposition was based on two broad propositions. First, that there is no material common question of law arising from the separate proceedings. The challenge in EMPC 494/2024 is about the jurisdictional issue, whereas EMPC 202/2025 is about

whether breaches of the settlement agreement occurred. The link between them is therefore tenuous.

[19] Second, consolidation would not be efficient, cost effective or in the interests of justice. TVNZ said that was because, if it succeeds in EMPC 494/2024, the Court will have no jurisdiction to consider the causes of action resolved by the settlement agreement. Requiring the challenges to be heard together would therefore increase costs for the parties by having to deal with issues that are resolved.

[20] The company also pleaded that the evidence required for each hearing is materially different, given the time periods involved. TVNZ consider that, even if the proceedings are consolidated, they would need to be determined sequentially so there would be no material saving in time or cost. Conversely, there would be no prejudice if the proceedings were heard separately. Rather, the outcome of the challenge in EMPC 494/2024, about jurisdiction, might reduce the evidence necessary for EMPC 202/2025.

The Employment Court Regulations and High Court Rules

[21] The Employment Court Regulations 2000 do not provide for consolidation of proceedings. The nearest they come to dealing with the subject is in reg 4, which provides that the regulations are to be construed in a manner that best secures the speedy, fair and just determination of proceedings before the Court.

[22] Where the regulations do not provide for a procedure the High Court Rules 2016 affecting a similar case may be applied.[4] Rule 10.12 to the High Court Rules provides for consolidation of proceedings:

> **10.12 When order may be made**
>
> The court may order that 2 or more proceedings be consolidated on terms it thinks just, or may order them to be tried at the same time or one immediately after another, or may order any of them to be stayed until after the determination of any other of them, if the court is satisfied—
>
> (a) that some common question of law or fact arises in both or all of them; or

[4] Regulation 6(2)(a)(ii).

(b) that the rights to relief claimed therein are in respect of or arise out of—

(i) the same event; or

(ii) the same transaction; or

(iii) the same event and the same transaction; or

(iv) the same series of events; or

(v) the same series of transactions; or

(vi) the same series of events and the same series of transactions; or

(c) that for some other reason it is desirable to make an order under this rule.

[23] Counsel agreed on the applicability of r 10.12 and that the Court has a wide discretion.[5] Both counsel referred to *Medlab Hamilton Ltd v Waikato District Health Board* decided under the forerunner to r 10.12.[6] In that case, Rodney Hansen J held that the discretion is wide and is to be exercised broadly in the interests of justice.[7] Among the factors favouring consolidation discussed in that case were the savings in time and cost to the parties, savings in judicial resources, and removing the risk of inconsistent decisions.[8]

The pleadings

[24] In EMPC 494/2024, Mr Santamaria seeks an order setting aside the Authority's November 2024 determination. An integral part of this statement of claim is the pleading that TVNZ continued to owe duties to him as an employee from the date when the settlement agreement was signed until his resignation took effect at the end of May 2022.

[25] This challenge calls into question the Authority's interpretation of the clause in the settlement agreement providing that it was a full and final settlement.

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5 *Regan v Gill* [2011] NZCA 607; approving *Medlab Hamilton Ltd v Waikato District Health Board* (2007) 18 PRNZ 517 (HC).

6 Former High Court Rules, r 382.

7 *Medlab Hamilton*, above n 5, at [8].

8 Drawing on *Callplus Ltd v Telecom New Zealand Ltd* (2000) 15 PRNZ 14 (HC); and *Amalgamated Finance Ltd v Wyness* HC Wellington CP156/86, 19 February 1987 at [8].

[26] If Mr Santamaria succeeds in setting aside the determination, he will open the door to his claims that duties were owed to him as an employee during his final days of employment and that they were breached by TVNZ.

[27] Mr Santamaria's challenge in EMPC 202/2025 pleads nine alleged breaches. Breach 1 is an allegation that the statutory duty of good faith in s 4 of the Act was breached by TVNZ between 28 May and 31 May 2022. The pleading arises in the context of allegations about what steps were, or were not, taken at a time of growing media interest in Mr Santamaria's departure from TVNZ.

[28] Breach 2 is an alleged breach of an implied contractual duty to provide a safe workplace until the end of his employment on 31 May 2022.

[29] Pleaded breaches 3, 4, 5, 6 and 7 all allege that TVNZ breached different clauses of the settlement agreement. Breach 8 is an alleged failure by TVNZ to take all reasonable steps to give effect to the settlement agreement, described in a shorthand expression as breaching an "anti-avoidance implied term". Breach 9 is an allegation that TVNZ undermined the settlement agreement.

[30] There is an overlap between the first two pleaded breaches in EMPC 202/2025 and the issues raised in EMPC 494/2024. All of the alleged breaches are denied by TVNZ.

[31] As already mentioned, in TVNZ's statement of claim it alleges Mr Santamaria breached the settlement agreement in certain public statements and seeks remedies against him.

Should consolidation be granted?

[32] Central to Mr Kalderimis KC's submission was the contention that the proceedings are not distinct but are interdependent parts of a dispute arising between the same parties, from the same employment relationship, its breakdown and settlement.

[33] If that proposition is accepted, all of the claims will approach similar issues but, potentially, from different angles. Mr Kalderimis said that was because they have

a shared factual nucleus and the legal issues overlap as they concern or relate to the meaning and effect of the settlement agreement.

[34] Part of this submission was that, no matter which claim is being considered, the legal arguments about the effect of different provisions of the settlement agreement must necessarily involve first understanding what the agreement means. That task is an exercise in contractual interpretation, common to all of the claims including those by TVNZ. To undertake that task requires a full understanding of the background to the agreement. Relying on *Bathurst Resources Ltd v L & M Cole Holdings*, that means examination of all the background circumstances that would have been reasonably available to persons in the position of the parties.[9] To supply that background necessarily involves evidence about what happened.

[35] To demonstrate the robustness of that analysis Mr Kalderimis invited considering the application from a slightly different perspective, that is to ask if it was appropriate for the Authority to split the investigation in the first place. His submission was that the decision to do so was problematic and consolidation really invited reconstituting the claims into their original (whole) form.

[36] The Court was asked to consider how the Authority's approach compared to a preliminary question in the High Court under r 10.15. Under that rule, the Court may decide a separate question as a preliminary issue. However, electing this course of action is not without potential pitfalls as described in *Haden v Attorney-General*.[10]

[37] In *Haden*, the Court commented that the starting point is at least a "moderate presumption" against a split trial, borne out in practice because applications under the rule fail more frequently than they succeed.[11] *Haden* quoted favourably from comments by Lord Scarman in *Tilling v Whiteman*:[12]

> Preliminary points of law are too often treacherous shortcuts. Their price can be, as here, delay, anxiety, and expense.

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9 *Bathurst Resources Ltd v L&M Cole Holdings* [2021] NZSC 85, [2021] 1 NZLR 696.
10 *Haden v Attorney-General* (2011) 22 PRNZ 1 (HC).
11 At [46].
12 At [48]; citing *Tilling v Whiteman* [1980] AC 1 (HL) at [25].

[38] *Haden* identified five questions to be answered before granting an application for a split trial:[13]

(a) Will there be difficult demarcation questions between those issues to be addressed at the first trial and those left for the second?

(b) Will the separate question bring the proceedings to an end?

(c) What potential time saving does the separate question offer?

(d) How would appeals be dealt with?

(e) Are there any other practical considerations tending one way or the other?

[39] The first question was described by the Court as the single most important one and involves looking at what is pleaded, what issues arise on the separate question, what remains for the second hearing, and what evidence is required. The Court in *Haden* held that issues in the two hearings desirably should be discrete. If they are not, or if there is significant evidential overlap, separate decisions are far less likely to be appropriate.[14]

[40] Mr Santamaria's case for consolidation really came down to the proposition that all of the claims throughout both proceedings having common threads between them. If that is accepted, his argument was that it would be unwise, and inefficient, to try to determine some claims in isolation from the rest. Otherwise, there is a risk of duplication, inconsistency in decisions, inconvenience to witnesses, and potential concerns about issue estoppel where a factual finding in the first hearing turns out not to have been right when considered in the second hearing. Added complications arise from separate appeal rights.

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13 *Haden*, above n 10, at [50].

14 At [50](a) and relying on *Levi Strauss & Co v Kimbyr Investments Ltd* (1992) 5 PRNZ 577 (HC).

[41] Mr Kalderimis accepted that success in this application would mean the hearing scheduled for October would be lost, but considered such a detriment was significantly outweighed by the benefits arising from consolidation.

[42] For TVNZ, Ms Dew KC took a different position. Her overarching submission was that it would be unjust to defer hearing the challenge in EMPC 494/2024. Maintaining separate challenges was justified on the basis that the issues in the proceedings are discrete and TVNZ is entitled to have the already scheduled hearing concluded. Separate hearings were justified given that the issues in EMPC 494/2024 concern whether the events of 28 May to 31 May 2022 were compromised by the settlement agreement and cannot be considered by the Court, while the preponderance of the remaining claims are about events after 31 May.

[43] It was said that there are other benefits from separate hearings. If TVNZ is successful in resisting the challenge in EMPC 494/2024, that outcome will contain the substantive hearing in EMPC 202/2025. That was because the Court would not hear evidence or argument about the alleged breaches that are said to arise between 28 May and 31 May 2022, or any evidence or arguments about remedies that attach to them. Ms Dew described that situation as TVNZ being entitled to rely on this "important jurisdictional protection" in the same way as the company would be able to apply to strike out part of a claim in the High Court.

[44] Containing EMPC 202/2025 was seen by TVNZ as also providing savings in time and cost by avoiding unnecessary disclosure because it would not be needed for alleged breaches 1 and 2 (that is in the period 28 May to 31 May 2022). Not having to provide that disclosure would avoid the risk of unnecessary public scrutiny of the documents that might otherwise be disclosed and assist in protecting the privacy of current and former employees. An additional benefit of addressing the jurisdictional issue separately was the possibility that the number of witnesses would be reduced.

[45] Ms Dew also referred to the possibility that evidence about causation and quantum would be more limited if the jurisdictional case was heard first and, presumably, provided TVNZ succeeds.

[46] To support those submissions, Ms Dew said that it is not uncommon for the Court to hear challenges from preliminary determinations of the Authority. She accepted that the Court's discretion is wide but argued that the fair and just disposal of proceedings should always take precedence[15] and that it would be unjust to deprive TVNZ of to the right of a prompt hearing in October 2025.[16]

Discussion

[47] I am satisfied that the application should be granted and the claims in each proceeding must be consolidated into EMPC 202/2025. My reasons for that conclusion follow. First, an integral part of all the claims is understanding what the settlement agreement means. That interpretative exercise, including as it will all of the relevant background, should be undertaken only once.

[48] Second, I am not persuaded that a demarcation between the claims in each proceeding can be so readily and easily drawn as Ms Dew's submissions suggest. I prefer Mr Kalderimis' submission that, even if TVNZ succeeds in arguing that there is no jurisdiction available to examine breaches 1 and 2, because of the settlement agreement, the remaining claims allege breaches which touch on the same time period although perhaps from different perspectives. Trying to maintain separate hearings in that situation runs the gauntlet of the pitfalls in *Haden*.

[49] Third, I accept Mr Kalderimis' submission that there was a degree of artificiality in the Authority's decision to split its investigation. There was considerable force in his point that consolidation would reconstitute proceedings that ought not to have been separated in the first place.

[50] Fourth, even in separate hearings were maintained, the outcome of the challenge to the November determination will not bring the other proceeding to an end. Nor in that situation is it likely that EMPC 202/2025 would be noticeably shorter, given the need to establish what the agreement means before deciding if it was breached.

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15 Relying on *Morris v AEL Bloodstock Ltd* HC Hamilton CIV-2010-419-205, 22 September 2010; and *Medlab Hamilton*, above n 5; *Shadbolt v Invercargill City Council* [2021] NZHC 2362 at [16].

16 *CallPlus Ltd*, above n 8, at [38]; *Eriksen v William Mercer Ltd* [1997] EMHNZ 1077.

Outcome

[51] The application is granted. The proceedings are to be consolidated as EMPC 202/2025.

[52] Mr Santamaria must file an amended statement of claim containing all of his causes of action no later than **17 September 2025**.

[53] For the avoidance of doubt, TVNZ's claim alleging breaches of the settlement agreement by Mr Santamaria is to be pleaded as a counterclaim when it files a statement of defence.

[54] The hearing of EMPC 494/2024 scheduled to begin on 21 October 2025 is vacated.

[55] The existing timetable directions in EMPC 494/2024 are set aside.

[56] The Registrar is to arrange a telephone directions conference as soon as is reasonably possible after the amended pleadings are filed for the purpose of considering directions to advance the litigation to a hearing.

[57] Mr Santamaria is entitled to costs. If agreement about them cannot be reached memoranda may be filed.

K G Smith
Judge

Judgment signed at 3.40 pm on 27 August 2025