

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

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

**[2025] NZEmpC 193
EMPC 461/2024**

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

AND IN THE MATTER OF an application for stay of proceedings

AND IN THE MATTER OF an application for security for costs

BETWEEN BLACK LION HOLDINGS LIMITED
Plaintiff

AND CAROLYN PETERSON
Defendant

Hearing: On the papers

Appearances: S Worku, agent for plaintiff
S Parry, counsel for defendant

Judgment: 29 August 2025

**INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN
(application for stay of proceedings and application for security for costs)**

[1] Black Lion Holdings Ltd has challenged a determination of the Employment Relations Authority that found it had unjustifiably dismissed Ms Peterson.¹ The Authority ordered Black Lion to pay Ms Peterson \$18,450 in respect of the termination of her employment, being:²

- (a) \$1,725 unlawfully deducted from Ms Peterson's wages;

¹ *Peterson v Black Lion Holdings Ltd* [2024] NZERA 648.

² At [27].

- (b) \$1,725 for the contractual notice period; and
- (c) \$15,000 as compensation for humiliation, loss of dignity and injury to Ms Peterson's feelings.

[2] Black Lion has applied for a stay of proceedings, so that it does not have to make the payments ordered by the Authority. Ms Peterson has applied for security for costs against Black Lion. This judgment resolves both applications.

[3] Black Lion relies on an affidavit filed by its agent, Mr Worku, for both its application for a stay and its opposition to security for costs. Black Lion's position is that it accepts that the sum of \$1,725 is due to Ms Peterson for the deduction from her final pay, but otherwise that it disagrees with the Authority's determination and with the way in which the Authority handled the case. As a result, it believes it is unfair for Black Lion to have to make the payments ordered by the Authority while its challenge is on foot. Black Lion also says it is not in a position to pay the sums ordered, or any security for costs due to "the current economic climate".

[4] The grounds on which Ms Peterson opposes the application for a stay primarily are that Black Lion has not made out any basis to warrant such a stay. Mr Parry, counsel for Ms Peterson, says further that:

- (a) a stay of proceeding is not necessary for Black Lion to pursue its challenge;
- (b) Ms Peterson will be injuriously affected by a stay; and
- (c) there is reason to believe that Black Lion's challenge is not being made in good faith.

[5] Ms Peterson's application for security for costs is made on the basis that there is reason to believe that Black Lion will be unable to pay Ms Peterson's costs if Black Lion is unsuccessful in its proceeding, and that it is just in all the circumstances to order security for costs.

[6] An affidavit has been filed by a solicitor employed by Community Law Wellington and Hutt Valley, which acts for Ms Peterson, giving evidence of a telephone discussion with Mr Worku in which the solicitor says Mr Worku was belligerent and said that he had no intention of complying with the Authority's determination because it was being challenged.

A challenge does not operate as a stay

[7] The starting point in considering applications for a stay is s 180 of the Employment Relations Act 2000. The effect of that section is that filing a challenge to a determination does not operate as a stay of the Authority's orders, unless the Court or the Authority so orders.

[8] The general principle is that a successful party at first instance is entitled to the fruits of their success unless good grounds have been established otherwise, in which case the Court may order a stay.³ In considering an application for a stay, the Court must be satisfied that to do so would be in the interests of justice.⁴ There are well-established factors that the Court will consider, including:⁵

- (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 a stay;
- (d) the extent to which a stay would impact on third parties;
- (e) the novelty and/or importance of the question involved;
- (f) the public interest in the proceeding; and

³ *Dymocks Franchise Systems (NSW) PTY Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (CA).

⁴ *UBP Ltd v Rangitaawa-Kauri* [2022] NZEmpC 25 at [6].

⁵ *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [5]–[6]; and *UBP Ltd v Rangitaawa-Kauri*, above n 4, at [7].

(g) the overall balance of convenience.

[9] The starting point is that Ms Peterson is entitled, absent good reason, to be paid the amounts ordered by the Authority. The principal ground raised for the application for a stay is Black Lion's discontent with the outcome of the Authority's investigation. But, as the Court has previously noted, something more than disappointment at the result in the Authority is required for a stay to be justified.⁶

[10] In these proceedings, there is insufficient evidence that if a stay is not granted, Black Lion's challenge will be ineffectual.

[11] While Ms Peterson has raised the question of good faith, I accept for the purposes of this application that the challenge is brought for genuine reasons and not simply as a delaying tactic.

[12] It is axiomatic that not being paid the sum that she is entitled to will injuriously affect Ms Peterson; she will not have the benefit of the Authority's award.

[13] There is no issue regarding third parties; there are no novel or important questions involved in the case; nor is there any public interest in the proceedings.

[14] In short, it is not in the interests of justice for a stay to be ordered and the application for a stay is declined. This is principally because a stay is not required to protect Black Lion's challenge.

Security for costs can be ordered if there is reason to believe that a plaintiff may not be able to pay costs

[15] The Employment Court has jurisdiction to order a party to pay security for costs, and to stay the proceedings until payment has been made or security, in the quantum ordered by the Court, has been given.⁷ There is no specific procedure for ordering security in the Employment Relations Act or the Employment Court

⁶ *BR & SL Porter Ltd v Higgs* [2020] NZEmpC 76 at [6].

⁷ *Quality Consumables v Hannah (No 2)* [2017] NZEmpC 155 at [11].

Regulations 2000. Accordingly, applications are dealt with in accordance with the procedures provided for in the High Court Rules 2016.⁸

[16] An order for security costs may be made if there is reason to believe that the plaintiff may be unable to pay the costs of the defendant if the plaintiff is unsuccessful in the proceedings.⁹ If the threshold is met, the Court may order the giving of security for costs if it considers that such an order is just in all the circumstances.¹⁰

[17] Overall, the Court needs to balance the interests of the plaintiff and the defendant in the exercise.

[18] The only evidence of Black Lion's financial position is that included in Mr Worku's affidavit and repeated in Black Lion's notice of opposition to the application for security for costs. Black Lion says it is not presently in a position to pay the sums ordered by the Authority, or security for costs. That evidence means there is reason to believe that Black Lion may be unable to pay Ms Peterson's costs if its challenge is unsuccessful.

[19] Mr Parry's calculation of scale costs for these proceedings totals \$20,793. That is calculated on the basis that costs would be on a category 2B basis.¹¹ It may be that the category appropriate for these proceedings is somewhat less.

[20] In the circumstances, I consider that security for costs of \$8,427 ought to be paid. This is the amount that would be payable on a category 1A basis, which would be the minimum amount that Ms Peterson could reasonably expect to receive for court costs.

[21] Accordingly, the Court makes the following orders:

- (a) Black Lion Holdings Ltd is to pay security for costs of \$8,427 into Court within 14 days of the date of this judgment, to be held by the

⁸ Employment Court Regulations 2000, reg 6.

⁹ High Court Rules 2016, r 5.45(1)(b).

¹⁰ Rule 5.45(2).

¹¹ Employment Court of New Zealand "Practice Directions" (1 September 2024) <www.employmentcourt.govt.nz> at No 18.

Registrar on interest-bearing deposit, pending further order of the Court.

(b) The challenge is stayed until security for costs is paid.

[22] Costs in respect of these applications are reserved.

J C Holden
Judge

Judgment signed at 12.30 pm on Friday 29 August 2025