

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

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2025] NZEmpC 26  
EMPC 2/2023**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application to dismiss proceeding for want of prosecution
BETWEEN	CARRINGTON RESORT JADE LP Plaintiff
AND	TONI MAHENO Defendant

Hearing: On the papers

Appearances: W Tan, agent for plaintiff  
A Kersjes, advocate for defendant

Judgment: 21 February 2025

---

**INTERLOCUTORY JUDGMENT (NO 4) OF JUDGE KATHRYN BECK  
(Application to dismiss proceeding for want of prosecution)**

---

**Background**

[1] The plaintiff in these proceedings, Carrington Resort Jade LP (Carrington), has filed a challenge to a determination of the Employment Relations Authority. The defendant, Toni Maheno, has applied for the Court to strike out that challenge on the basis that Carrington has not pursued its challenge.

[2] In its determination, the Authority awarded Ms Maheno \$21,000 in compensation under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act).<sup>1</sup> The Authority also awarded Ms Maheno a sum of \$10,071.56 in costs.<sup>2</sup>

[3] These proceedings have given rise to a range of interlocutory issues. Carrington unsuccessfully applied for a stay of proceedings over the Authority's substantive award, so Ms Maheno was able to enforce it.<sup>3</sup> As the successful party on that application, Ms Maheno was awarded \$2,229 in costs.<sup>4</sup> She unsuccessfully applied for an order for security for costs.<sup>5</sup> Further, the Court granted Ms Maheno an extension of time to file a statement of defence.<sup>6</sup>

[4] As a result of comments made by the Authority about the actions of Carrington in conducting its case, the Court obtained a good faith report from the Authority pursuant to s 181 of the Act.<sup>7</sup> The good faith report detailed numerous incidents of concern, including failing to attend a case management conference, failing to file documents on time, and failing to respond to the Authority's communications.<sup>8</sup> The Court concluded that Carrington did not participate in the Authority's investigation in a manner designed to resolve the issues involved.<sup>9</sup> The Court also noted in that decision that Carrington was not engaging with the Court's processes and was proving unwilling to communicate with the Court registry staff.<sup>10</sup>

[5] Although the Court found that Carrington did not engage with the Authority in good faith and was not engaging with the Court in good faith, it did not limit the nature and extent of the hearing as that would have had the effect of striking out Carrington's claim.<sup>11</sup> However, the Court did state that Ms Maheno's concerns could be "resolved with strict timetabling orders such that if Carrington files evidence, documents or

---

<sup>1</sup> *Maheno v Carrington Resort Jade LP* [2022] NZERA 635 at [240].

<sup>2</sup> *Maheno v Carrington Resort Jade LP* [2023] NZERA 27 at [37].

<sup>3</sup> *Carrington Resort Jade LP v Maheno* [2023] NZEmpC 78.

<sup>4</sup> *Carrington Resort Jade LP v Maheno* [2023] NZEmpC 120.

<sup>5</sup> *Carrington Resort Jade LP v Maheno* [2023] NZEmpC 115 at [16]–[28].

<sup>6</sup> At [2]–[15].

<sup>7</sup> *Maheno v Carrington Resort Jade LP*, above n 1, at [26]–[83].

<sup>8</sup> *Carrington Resort Jade LP v Maheno* [2023] NZEmpC 175 at [9]–[13].

<sup>9</sup> At [14].

<sup>10</sup> At [22].

<sup>11</sup> At [23].

submissions late, they will not be considered by the Court without leave first being obtained.”<sup>12</sup>

[6] Ms Maheno was also awarded a sum of \$3,585 in costs following the judgment on the good faith report.<sup>13</sup>

[7] Unfortunately, Carrington has failed to comply with the Court’s timetabling orders. In a minute dated 14 November 2023, the Court ordered Carrington to file its briefs of evidence by 23 February 2024, with Ms Maheno having until 22 March 2024 to file her briefs of evidence. The hearing was then set down for 20 May 2024.

[8] Neither party complied with the Court’s orders, so a directions conference was convened on 30 April 2024. Ms Maheno’s representative, Mr Kersjes, appeared, but Carrington’s representative, Mr Tan, did not. He had advised the Court the previous day that he was overseas. He was invited to attend from wherever he was. However, he did not respond to the registry and did not call. Ultimately, the Court ordered Carrington to file briefs of evidence and a bundle of documents by 7 May 2024. In the event of Carrington filing its documents, Ms Maheno’s briefs of evidence were to be filed by 15 May 2024.

[9] Carrington did not file its briefs of evidence and bundle of documents by 7 May 2024. As a result, the hearing set down for 20 May 2024 was vacated. The Court noted that no further hearing date would be set down until all briefs of evidence and the bundle of documents had been filed.

[10] On 28 May 2024, Mr Tan, who is legally qualified, filed a bundle which included intermingled documents, and documents that may have been briefs of evidence. He was advised about the proper format, directed to the Court’s website and asked to re-file. He did not do so. The registry followed up with him in July and again in October 2024, but there was no response.

---

<sup>12</sup> At [24].

<sup>13</sup> *Carrington Resort Jade LP v Maheno* [2023] NZEmpC 208.

## **The strike-out application**

[11] Mr Kersjes observed that despite the Court's indication that strict timetabling orders would be sufficient, Carrington has not complied with those directions and appears to be no longer engaged with these proceedings. He submitted that Carrington's lack of engagement, along with its conduct in the Authority, shows that this challenge has not been pursued in good faith or for good reasons.

[12] Mr Kersjes submitted that the delays caused by Carrington in advancing its claim are unreasonable and clearly exceed any acceptable timeframe for progression. He noted that Carrington has not provided any explanation for its failures and remains consistently unresponsive, which, he submitted, reflects a disregard for the proper administration of justice. Further, he submitted that Ms Maheno has been severely prejudiced by Carrington's conduct – in particular, that the ongoing nature of this matter has caused unnecessary stress and disruption to her life and that she has been subjected to additional unnecessary costs as a result of Carrington's delays. Therefore, Mr Kersjes submitted that Carrington's challenge should be struck out.

[13] Although, on 4 November 2024, Ms Maheno served the strike-out application on Carrington (and subsequently filed an affidavit of service with the Court), Carrington did not file a notice of opposition or respond at all. Therefore, I set the matter down to be heard on the papers, which was notified to the parties by minute dated 27 November 2024.

[14] Carrington has not engaged with the Court in any way on this application.

## **Legal principles**

[15] Rule 15.2 of the High Court Rules provides:

### **15.2 Dismissal for want of prosecution**

Any opposite party may apply to have all or part of a proceeding or counterclaim dismissed or stayed, and the court may make such order as it thinks just, if—

- (a) the plaintiff fails to prosecute all or part of the plaintiff's proceeding to trial and judgment; or
- (b) the defendant fails to prosecute all or part of the defendant's counterclaim to trial and judgment.

[16] An applicant seeking the strike-out of a claim or counterclaim for want of prosecution, as provided for in r 15.2 of the High Court Rules, must show that there has been inordinate delay, that the delay is inexcusable, and that the delay has caused serious prejudice to the other party. However, the decision to strike out is discretionary, and those considerations are not necessarily exclusive. The overriding consideration is whether, despite the delay, justice can be done.<sup>14</sup>

### **Analysis**

[17] I accept that there has been inordinate and inexcusable delay in Carrington pursuing its challenge. Timetabling orders were set in November 2023, and Carrington was to file documents by 23 February 2024. Almost a year has elapsed since that date, and Carrington has not made any attempt to explain or excuse the delay. Overall, the delay strongly indicates that it is no longer engaged in these proceedings and does not intend to pursue them further.

[18] I also accept that Carrington's delay in pursuing its challenge has caused serious prejudice to Ms Maheno. These proceedings have caused considerable stress to her and have disrupted her life. They continue to hang over her head with escalating costs. The sum of \$31,071.56,<sup>15</sup> which is in dispute in these proceedings, is not inconsequential, but if these proceedings are permitted to continue, there is a real risk that Ms Maheno's success in the Authority could be rendered increasingly illusory by her legal costs.

[19] Therefore, I consider that the unexplained delay in the circumstances is sufficiently serious and has caused sufficient prejudice to Ms Maheno to warrant Carrington's challenge being struck out.

[20] For completeness, I observe that Carrington has repeatedly breached the Court's timetabling directions. If the proceedings could not be struck out under r 15.2 of the High Court Rules, they could likely have been struck out under r 7.48, which

---

<sup>14</sup> *New Zealand Industrial Gases Ltd v Andersons Ltd* [1970] NZLR 58 (CA) at 61.

<sup>15</sup> \$21,000 plus costs of \$10,071.56 as set out above at [2].

permits pleadings to be struck out where a party has failed to comply with interlocutory and case management orders.

## **Orders**

[21] Carrington's challenge of the Authority's substantive determination dated 30 November 2022 is dismissed, including insofar as the challenge related to the Authority's determination on costs dated 20 January 2023.

## **Costs**

[22] Costs are reserved. Ms Maheno is entitled to costs on this application and is also entitled to costs incurred in defending the substantive challenge.

[23] If the parties are unable to agree on the issue, Ms Maheno will have 14 days from the date of this judgment within which to file and serve any memorandum and supporting material, with Carrington having a further 14 days within which to respond. Any reply should be filed within a further seven days.

Kathryn Beck  
Judge

Judgment signed at 12.30 pm on 21 February 2025