

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

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

**[2025] NZEmpC 43
EMPC 437/2024**

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

AND IN THE MATTER OF an application for stay of execution

BETWEEN HAPPY BELLY PRODUCTION
LIMITED
Plaintiff

AND HARRY DAWSON
Defendant

Hearing: On the papers

Appearances: M Liu, plaintiff's agent
H Dawson, defendant in person

Judgment: 13 March 2025

**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS
(Application for stay of execution)**

Introduction

[1] The plaintiff company has applied for a stay of execution of orders made against it by the Employment Relations Authority (the Authority).¹

[2] In its determination dated 21 October 2024, the Authority ordered the plaintiff to pay the defendant the amount of \$1,726.64 (gross) in lost remuneration, interest on

¹ *Dawson v Happy Belly Production Ltd* [2024] NZERA 635.

that amount from 11 September 2023 to the date of payment, and \$71.55 in reimbursement of the Authority's fee to lodge the application.

[3] The application for a stay arises in the context of a challenge filed by the plaintiff against the Authority's determination, which is being pursued on a de novo basis.

Legal framework

[4] A challenge does not operate as a stay of proceedings on a determination of the Authority.² That reflects the principle that a successful litigant is ordinarily entitled to the fruits of their success.³ There are, however, circumstances in which a stay is appropriate, and the Court may order a stay of proceedings where a challenge against a determination of the Authority is pursued.⁴ The challenging party must satisfy the Court that adequate grounds have been made out.⁵ Any orders made must be the least necessary to preserve the position of the challenging party, and that party can be expected, where a monetary judgment is involved, to make some concession, such as an offer to make a payment into Court pending the outcome of the appellate process.⁶

[5] In determining whether a stay ought to be granted, the Court must balance the interests of the parties and generally has regard to the following non-exhaustive list of factors:⁷

- (a) whether the challenge will be rendered ineffectual if a stay is not ordered;
- (b) whether the challenge is brought for good reasons and being pursued in good faith;

² Employment Relations Act 2000, s 180.

³ *Duncan v Osborne Building Ltd* (1992) 6 PRNZ 85 (CA) at 87.

⁴ Employment Court Regulations 2000, reg 64.

⁵ *Grove v Archibald* [1998] 2 ERNZ 125 (EmpC) at 128–129.

⁶ *Bathurst Resources Ltd v L&M Coal Holdings Ltd* [2020] NZCA 186, (2020) 25 PRNZ 341 at [19].

⁷ *Assured Financial Peace Ltd v Pais* [2010] NZEmpC 50 at [5]; and *Dymoocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (CA).

- (c) whether the successful party at first instance will be injuriously affected by a stay;
- (d) the extent to which a stay will impact on third parties;
- (e) the novelty and/or importance of the questions involved;
- (f) the public interest in the proceeding; and
- (g) the overall balance of convenience.

[6] Other factors, including the likely merits of any related challenge, can also be relevant.⁸ Ultimately, the overarching consideration is the interests of justice.

[7] The plaintiff's application is primarily focused on two factors. First, that the merits weigh in favour of its challenge and second that if the company was required to meet the Authority's orders against it, it would adversely impact the company's financial position. It is also said that a stay would not materially affect Mr Dawson's interests. Mr Dawson is firmly opposed to a stay.

Analysis

[8] While the company's focus is on merits and adverse impact, I have considered matters more broadly and deal with each of the generally applied factors in turn.

Will the challenge be rendered ineffectual if a stay is not granted?

[9] There is nothing to suggest that if a stay is not granted the company will be unable to proceed with their challenge or its challenge rights would be rendered ineffectual. In particular, the amount at issue on the challenge is modest, and there is no material or information before the Court which might otherwise suggest that Mr Dawson would be unable to repay the money if the challenge succeeded in whole or in part. This factor is neutral.

⁸ *Broadspectrum (NZ) Ltd v Nathan* [2017] NZCA 434, [2017] ERNZ 733 at [34].

Was the challenge brought for good reasons, and is it being pursued in good faith?

[10] I accept, for present purposes, that the challenge is brought in good faith.

Will the successful party at first instance be injuriously affected by a stay?

[11] If a stay is granted Mr Dawson will not be able to take steps to enforce the determination of the Authority and obtain payment of the amounts owing in his favour until after the challenge process has come to an end. That would likely represent a considerable time lapse which I accept would adversely impact on him. This factor weighs against a stay being granted.

Will the stay have an impact on third parties?

[12] There is no suggestion that a stay would impact any third party; nor is there anything to suggest that declining to stay on enforcement would impact on any third party (a factor I also consider relevant to the assessment exercise). This factor is neutral.

Are there any novel or important issues, and is there any public interest?

[13] There are no novel or important issues raised by these proceedings. They centre on the correct interpretation of a clause in an individual employment agreement relating to hours of work. No issues of broader public interest arise. This factor is neutral.

Are the merits of the plaintiff's challenge clear enough to be relevant?

[14] The plaintiff has expressed a strong view that the merits weigh in the company's favour and that the Authority made significant errors of fact and law.

[15] There are difficulties associated with assessing the likely merits of a challenge, particularly where (as here) the challenge is pursued on a de novo basis. However, the outcome of the challenge in this case will inevitably centre on the correct interpretation of the hours of work clause in the employment agreement. It appears that the Authority member applied a conventional approach to the interpretative exercise and reached a

clear view that the plaintiff had failed to meet its contractual obligations having regard to the requirements of the relevant provisions.

[16] Nevertheless, there are factual matters relating to the extent to which (as the company alleges) Mr Dawson worked fewer hours on his own volition – a point that Mr Dawson refutes. Such matters will need to be resolved on the evidence given at the hearing. It is accordingly too early to say where the merits lie. The merits, insofar as they can be assessed at this stage, are neutral.

Balance of convenience and interests of justice

[17] The balance of convenience weighs against a stay being granted in this case. Mr Dawson succeeded at first instance and, absent good reason, ought to be entitled to the fruits of his success. I am unable to discern any good reason in support of a stay. In the circumstances, the interests of justice would not be served by granting the application.

Outcome

[18] The application for a stay of execution is declined.

[19] Mr Dawson is entitled to costs, the quantum of which I reserve.

Christina Inglis
Chief Judge

Judgment signed at 3.30 pm on 13 March 2025