

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

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

**[2025] NZEmpC 65  
EMPC 137/2024**

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

AND IN THE MATTER OF an application to expand scope

AND IN THE MATTER OF an application for leave to file further  
evidence

BETWEEN RURAL PRACTICE LIMITED  
First Plaintiff

AND REDZA ABDUL-JABBAR  
Second Plaintiff

AND A LABOUR INSPECTOR OF THE  
MINISTRY OF BUSINESS, INNOVATION  
AND EMPLOYMENT  
Defendant

Hearing: On the papers

Appearances: M J Hammond, counsel for plaintiffs  
A K Webster, counsel for defendant

Judgment: 3 April 2025

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**INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN  
(Application to expand scope; application for leave to file further evidence)**

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## Two applications are before the Court

[1] This judgment resolves two applications from the plaintiffs:

- (a) an application to expand the scope of this challenge, to include a ground of challenge that there is an apprehension of bias on behalf of the Authority member who determined the case in the Employment Relations Authority; and
- (b) an application for leave to file a further affidavit on behalf of the plaintiffs, in respect of the plaintiffs' financial position and in support of the contention that, by reasons of impecuniosity, any penalties award should be reduced.

[2] The plaintiffs' substantive challenge is non-de novo, and relates to the quantum of penalties that were imposed against the plaintiffs, which they say were excessive.<sup>1</sup>

[3] The parties agreed that the issue for the Court is whether the Authority made the following errors of law and fact:

- (i) adopting an excessive starting point by failing to properly weigh the 12 matters for consideration in assessing penalties;
- (ii) failing to adequately recognise the plaintiffs' financial impecuniosity; and
- (iii) failing to reduce the level of the penalties in recognition of the mitigating factors.

[4] The parties also jointly advised that none of them intended to call witnesses; it was to be a submissions-only hearing

[5] The challenge was set down to be heard on 16 October 2024 and submissions were filed by the parties in advance.

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<sup>1</sup> *A Labour Inspector v Rural Practice Ltd* [2024] NZERA 183.

## **An issue was raised shortly before the hearing was to take place**

[6] On 11 October 2024, however, the plaintiffs filed a memorandum raising a concern that Mr Dumbleton, who was the Authority member who dealt with the matter, had previously acted for the Labour Inspectorate.<sup>2</sup>

[7] The plaintiffs sought an adjournment, essentially so that counsel had time to consider what, if any, steps appropriately should be taken on behalf of the plaintiffs, arising out of this recent knowledge.

[8] An urgent telephone conference was convened on 14 October 2024, and, after discussion, the Court adjourned the hearing and made orders giving the plaintiffs time to file and serve any court proceedings or application with respect to the matters in issue, with further timetabling then to be determined.

[9] In their application of 30 October 2024, the plaintiffs accepted that the Court does not have jurisdiction to hear and determine issues of process that may have arisen in the Authority and advised that no proceedings were considered efficacious to the plaintiffs; for example, they did not intend to make an application for judicial review. The plaintiffs nevertheless made the application to expand the scope of the challenge to include, as a ground, the apprehension of bias. The application for leave to file a further affidavit on behalf of the plaintiffs in respect of their financial position was made in the same document, and referred to as an “ancillary matter”.

[10] The Labour Inspector opposes both applications. She says the additional ground is irrelevant and the Court lacks jurisdiction in relation to the Authority’s processes. She also says it is too late to file the proposed additional evidence, which could, if admitted, impact the nature of the challenge or cause other inconvenience. The Labour Inspector says the adjournment granted in October 2024 was for the purpose of allowing the plaintiffs to consider their position with respect to the alleged apprehension of bias, and not to give them time to shore up their claim by procuring and introducing new evidence.

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<sup>2</sup> But not the Labour Inspector in this case.

### **The scope was agreed**

[11] As noted, the challenge is non-de novo. The focus of the challenge is on the factual findings and legal reasoning of the Authority; it is in the nature of an appeal.

[12] The issue for the Court was determined by the pleadings and agreed by the parties. I see no basis to change that.

[13] While it is presently unclear how the alleged apprehension of bias is relevant to that issue, it is a matter for the plaintiffs and their representatives as to their submissions. It would be premature to assume that submissions regarding the apprehension of bias are irrelevant to the issue before the Court, and it is open to the plaintiffs to make such submissions as they consider to be useful. It then will be for the Court to consider the submissions, including as to their relevance. The application to expand the scope of the challenge, however, is unsuccessful.

### **Additional evidence is not relevant**

[14] The additional evidence the plaintiffs wish to place before the Court was not before the Authority. It comprises two affidavits sworn in January 2025. As such, it is not relevant to the issue of whether the Authority made errors of law and fact.

[15] I agree with the defendant that this evidence is not properly before the Court. The application for leave to file further affidavits on behalf of the plaintiffs is declined.

[16] Costs are reserved.

J C Holden  
Judge

Judgment signed at 9.00 am on 3 April 2025