

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

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

**[2025] NZEmpC 66
EMPC 446/2024**

IN THE MATTER OF an application for leave to extend time to file
 a challenge to a determination of the
 Employment Relations Authority

BETWEEN CARSTEN WEIDEMANN
 Applicant

AND LANDCORP FARMING LIMITED T/A
 PĀMU
 Respondent

Hearing: On the papers

Appearances: Applicant in person
 J Boyle, counsel for respondent

Judgment: 3 April 2025

JUDGMENT OF JUDGE KATHRYN BECK

[1] This judgment resolves an application for leave to file a challenge out of time.

[2] The applicant, Mr Weidemann, was employed by the respondent, Landcorp Farming Ltd (the company). He had negative interactions with the company and was subsequently dismissed. He then raised various claims against the company.

[3] In its determination dated 3 October 2024, the Authority rejected most of Mr Weidemann’s claims.¹ However, it accepted that he had been unjustifiably disadvantaged as a result of the company failing to properly investigate a claim that

¹ *Weidemann v Landcorp Farming Ltd* [2024] NZERA 585 (Member Szeto).

he was being bullied.² The Authority also found that Mr Weidemann had been made to buy some of his own personal protective equipment.³

[4] The last day for filing a challenge was 31 October 2024. On that date, Mr Weidemann took steps to file an application for leave to extend time to file a challenge. However, his application was not accepted for filing as it was not supported by an affidavit.⁴ The application, along with a supporting affidavit, was subsequently accepted for filing on 6 November 2024. Mr Weidemann stated that he had not yet filed a challenge because he could not find a lawyer, and his supporting affidavits provided evidence concerning his efforts to find a lawyer and also a draft statement of claim.

[5] In response, the company stated that Mr Weidemann failed to bring his case within time despite knowing that he had 28 days to do so, that he did not take any steps to preserve his position until 31 October 2024, that he has provided limited evidence of his attempts to find a lawyer, that it will be prejudiced in needing to defend proceedings, and that Mr Weidemann is in a poor financial position. An affidavit was filed in support of the company's opposition which set out information concerning Mr Weidemann's financial position as well as evidence of interactions between the parties.

Legal principles

[6] Section 179(2) of the Employment Relations Act 2000 (the Act) states that a challenge must be filed within 28 days of the date of the Authority's determination. However, pursuant to s 219 of the Act, the Court has jurisdiction to make orders extending time. The overriding consideration is the justice of the case. The following matters, where relevant, are material to the exercise of the discretion:⁵

- (a) the reason for the omission to bring the case within time;
- (b) the length of the delay;

² At [50].

³ At [111].

⁴ Employment Court Regulations 2000, reg 13A.

⁵ *Stevenson v Hato Paora College Trust Board* [2002] 2 ERNZ 103 (EmpC) at [8]; and *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38]–[39].

- (c) any prejudice or hardship to any other person;
- (d) the effect on the rights and liabilities of the parties;
- (e) subsequent events; and
- (f) the merits.

Analysis

[7] Mr Weidemann says that he failed to bring a challenge within time because he could not find legal representation. The company says in response that Mr Weidemann has not provided evidence of reasonable efforts to obtain legal representation, that he delayed in filing a challenge because of indecision and because he was trying to obtain more money from the company, and that he was capable of drafting a statement of claim given that he filed a draft statement of claim as part of his affidavit dated 6 November 2024.

[8] I accept that the delay may partially have been caused by the factors identified by the company. However, although Mr Weidemann's evidence could have been fuller, I accept his evidence that he unsuccessfully sought legal assistance both before and after the deadline. I consider that it was responsible of him, given that he was largely unsuccessful in the Authority, to seek legal support before filing a challenge.

[9] The delay in this case was brief. Mr Weidemann took steps to preserve his position on the last day for filing a challenge. He subsequently filed his application on 6 November 2024. As a result, the delay lasted only six days. That is a brief period. The company refers to a number of cases where leave was declined where similarly brief periods of delay had occurred, but in those cases the merits of the proposed challenge were demonstrably weak.⁶

⁶ *Stevenson v Hato Paora College Trust Board*, above n 5, at [27]; and *Day v Whitcoulls Group Ltd* [1997] ERNZ 541 (EmpC) at 569.

[10] The company says that it paid money into Mr Weidemann's account earlier than was required by the Authority determination because he had threatened to file proceedings in the Court if it did not do so. Further, it says that as the determination was not challenged within 28 days, it was entitled to conclude that the litigation was over. Finally, it says that if the challenge is permitted, Mr Weidemann may not be in a position to repay any sums if the company is successful or to meet any award of costs.

[11] I accept that the company may now need to defend a challenge in circumstances where it thought litigation had concluded. However, it was on notice of Mr Weidemann's intention within the 28-day timeframe,⁷ and the delay in formal filing was brief. I consider any prejudice to be minimal in the circumstances. If Mr Weidemann is not in a strong financial position, there are other steps the company can take. It is not a relevant consideration in relation to the grant of leave.

[12] Neither party has suggested that third parties would be prejudiced, that there are relevant subsequent events, or that the merits of the challenge are relevant to this application.

[13] Ultimately, the delay in this case was brief and was caused at least in part by Mr Weidemann being unable to obtain legal assistance. Mr Weidemann also took steps to preserve his position before the deadline elapsed. The company will not suffer serious prejudice if leave is granted whereas Mr Weidemann will lose his ability to file a challenge if leave is not granted. Therefore, I consider that leave ought to be granted.

Conclusion

[14] The application for leave to file a challenge out of time is successful.

[15] The draft statement of claim filed in Mr Weidemann's affidavit dated 6 November 2024 is accepted for filing.

⁷ Counsel for the respondent was copied into an email from Mr Weidemann to the Employment Relations Authority erroneously attempting to file his leave application on 31 October 2024, and then subsequent emails with this Court on 31 October 2024 and 1 November 2024.

[16] Costs are reserved. If the parties are unable to agree, memoranda may be filed.

Kathryn Beck
Judge

Judgment signed at 10.30 am on 3 April 2025