

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

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

**[2025] NZEmpC 74
EMPC 484/2023**

IN THE MATTER OF a declaration under s 6(5) of the
 Employment Relations Act 2000

AND IN THE MATTER OF an application to set aside appearance

BETWEEN GREGORY ARON LOCKE
 Plaintiff

AND RISHWORTH AVIATION ASIA PACIFIC
 LIMITED
 Defendant

Hearing: 24 March 2025
 (Heard at Auckland)

Appearances: G Pollak and G Chandok, counsel for plaintiff
 No appearance for defendant
 S Cook and TI Lamb, counsel for Korean Air Lines Co., Ltd

Judgment: 10 April 2025

**INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE KATHRYN BECK
(Application to set aside appearance)**

[1] This judgment resolves an application by the plaintiff, Gregory Locke, to set aside an appearance under protest to jurisdiction filed by the proposed second defendant, Korean Air Lines Co., Ltd (KAL).

[2] On 22 July 2019 Mr Locke was engaged by the defendant, Rishworth Aviation Asia Pacific Ltd (Rishworth), as an airline pilot. Under his contract with Rishworth, Mr Locke was assigned to fly for KAL. However, KAL was not a party to the agreement between Mr Locke and Rishworth.

[3] On 21 October 2022 Mr Locke was dismissed with immediate effect. Mr Locke then raised a personal grievance against Rishworth. On 22 December 2023 he filed proceedings in the Court in which he claimed he was an employee of Rishworth and that KAL was a controlling third party. Rishworth denied his claims and said that he was an independent contractor.

[4] On 6 June 2024 Mr Locke applied for the Court to join KAL as a party. He intends to seek orders that KAL was his employer or that it was a controlling third party to his relationship with Rishworth.

[5] On 2 July 2024 KAL filed an appearance under protest to jurisdiction. It said that any disputes between Mr Locke and KAL should be resolved in South Korea.

[6] On 27 August 2024 Mr Locke applied to set aside KAL's appearance under protest to jurisdiction. This judgment resolves that application.

[7] Rule 5.49 of the High Court Rules 2016 states that a defendant who objects to the jurisdiction of the Court may file and serve an appearance stating the defendant's objection and the grounds for it. Where the Court is satisfied that it has no jurisdiction to hear and determine the proceeding, it may dismiss the proceeding. If it does not dismiss the proceeding, the Court must set aside the appearance.

[8] The Court has jurisdiction to consider Mr Locke's application to join KAL as it was served in New Zealand. Where a party has been served in New Zealand, they are subject to the Court's jurisdiction as of right, and there is no ground for protesting the Court's jurisdiction under r 5.49.¹

[9] The primary argument pursued by KAL was that New Zealand is not the right forum for this case to be heard. Where a matter is served on a party outside of New Zealand, r 6.29(1) of the High Court Rules provides that issues relating to the

¹ *Brown v New Zealand Basing Ltd* [2017] NZSC 139, [2018] 1 NZLR 245 at [35]–[38]; and Maria Hook and Jack Wass *The Conflict of Laws in New Zealand* (LexisNexis, Wellington, 2020) at [2.363]. For completeness, I observe that it was not argued that the Court does not have subject matter jurisdiction.

appropriate forum are relevant to a protest to jurisdiction under r 5.49.² However, for the purposes of matters served in New Zealand, r 6.29(3) states:

When service of process has been validly effected within New Zealand, but New Zealand is not the appropriate forum for trial of the action, the defendant may apply for a stay, or for a dismissal of the proceeding under rule 15.1.

[10] I acknowledge that courts have sometimes made statements which, when taken at face value, appear to allow for a broader application of r 5.49.³ However, the courts in those cases did not consider the effect of r 6.29(3), and that provision clearly indicates that where service has been effected in New Zealand, the appropriate process is to apply for a stay or strike-out.⁴ I find that r 6.29(3) prevents any claim under r 5.49 on forum grounds where a matter has been served within New Zealand. I consider that finding to reflect the historical position at common law.⁵

[11] Therefore, as service has been validly effected within New Zealand and the Court has jurisdiction to hear Mr Locke's application for joinder, I order that the appearance under protest to jurisdiction filed by KAL be set aside.

[12] However, this does not resolve the parties' dispute concerning whether the Court should hear this matter. I anticipate that, pursuant to r 15.1 of the High Court Rules, orders may be sought by KAL on the basis that New Zealand is not the appropriate forum to hear this case. If such an application is filed, the parties ought to address whether reg 31G of the Employment Court Regulations 2000 has affected the Employment Court's powers to stay proceedings where a party has been served in New Zealand. As one textbook notes:⁶

Given that the Regulations impose such a rigorous test for declining jurisdiction over parties served overseas, it would be odd if the Employment Court continued to apply a less rigorous test, based on ordinary forum non conveniens principles, for declining jurisdiction over parties served in New Zealand.

² High Court Rules 2016, r 6.27–6.29. See also Employment Court Regulations 2000, reg 31A–31G.

³ *Commissioner of Inland Revenue v Redcliffe Forestry Venture Ltd* [2012] NZSC 94, [2013] 1 NZLR 804 at [25]–[27]; and *Wing Hung Printing Co Ltd v Saito Offshore Pty Ltd* [2010] NZCA 502, [2011] 1 NZLR 754 at [21] and [66].

⁴ See Hook and Wass, above n 1, at [2.363] and [2.370].

⁵ See *Spiliada Maritime Corp v Cansulex Ltd* [1987] 1 AC 460 (HL) at 474–482.

⁶ Hook and Wass, above n 1, at [2.315].

[13] As the successful party, Mr Locke is entitled to costs. If the parties are not able to agree, memoranda may be filed.

Kathryn Beck
Judge

Judgment signed at 12.30 pm on 10 April 2025