

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

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

**[2026] NZEmpC 17
EMPC 568/2025**

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

AND IN THE MATTER OF an application for a stay of execution

BETWEEN ASUREQUALITY LIMITED
Plaintiff

AND KIM KNIGHT
Defendant

EMPC 571/2025

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

BETWEEN KIM KNIGHT
Plaintiff

AND ASUREQUALITY LIMITED
Defendant

Hearing: On the papers

Appearances: Z Pentecost, counsel for AsureQuality Ltd
Y Hope, counsel for Ms Knight

Judgment: 4 February 2026

**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE INGLIS
(Application for a 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 In its determination dated 3 November 2025, the Authority ordered the plaintiff to pay the defendant \$25,000 compensation under s 123(1)(c)(i) of the Employment Relations Act 2000.

[2] In a subsequent determination the Authority ordered costs against the plaintiff company in the sum of \$5,571.55. That sum was to be paid within 28 days of the date of the determination; it has not been paid, is not subject to the stay application and accordingly can be put to one side. It remains enforceable.

[3] The parties have filed documentation in support of, and in opposition to, the stay application. The parties are content for the application to be dealt with on the papers.

[4] It is convenient to deal with a technical point raised by the defendant in respect of the application, which is said to be in the wrong form and is not, on that basis, a valid application. Even if I was satisfied that was correct, I would not have declined to deal with the application. It is clear what orders the plaintiff is seeking and why, and it would be putting form over substance not to deal with the application on its merits.

Legal framework

[5] A challenge does not operate as a stay.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.⁴ The challenging party must

¹ *Knight v AsureQuality Ltd* [2025] NZERA 704.

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.

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. 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:

- (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;
- (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 and whether the applicant has made any concession as to the existence of the orders made against it by the Authority, can also be relevant.⁶ Ultimately, the overarching consideration is the interests of justice.

Analysis

[7] I deal with each of the above factors in turn.

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]. The Court observed that concessionary steps were expected of an applicant for a stay of a money order, particularly when the order had been sustained on an appeal (in that case the orders of the High Court had been upheld by the Court of Appeal and the stay was sought pending the outcome of an appeal to the Supreme Court).

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

[8] The plaintiff company's application is firmly based on a concern about the defendant's ability to re-pay the sums ordered in their favour if the plaintiff's challenge succeeds; if the money is dissipated and cannot be recovered, the plaintiff's challenge rights will be rendered nugatory. The only evidence before the Court in respect of this matter is the unsupported concerns expressed in an affidavit, which are not explained in any detail.

[9] I am not satisfied that the challenge will be rendered ineffectual if no stay is granted.

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

[10] The defendant submits that the challenge has not been brought in good faith; rather it is simply a tactic to avoid paying the defendant the sums ordered in their favour. The plaintiff has a statutory right to challenge, which it is exercising. While the plaintiff appears to have taken no steps to meet the awards made against it, there is no evidence before the Court to support an inference that the challenge is being pursued other than in good faith.

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

[11] If a stay is granted, the defendant, who was successful in the Authority, will be denied access to the sums awarded in their favour, and for an indeterminate period of time. This factor weighs against a stay.

Will the stay have an impact on third parties?

[12] There is no suggestion that granting or declining a stay would impact any third party. 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 and 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] While the plaintiff submits that the merits weigh in its favour, it is premature to reach that conclusion for the purposes of determining the stay application.⁷ This factor is neutral.

Balance of convenience and interests of justice

[15] The balance of convenience weighs against a stay being granted and the overall interests of justice follow the balance of convenience.

Outcome

[16] The application for a stay of execution is declined. The orders made by the Authority remain enforceable.

[17] The defendant is entitled to costs, the quantum of which is reserved.

[18] A telephone directions conference should be scheduled with a Judge to timetable the challenges through to a hearing.

Christina Inglis
Chief Judge

Judgment signed at 8.30 am on 4 February 2026

⁷ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [36].