

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

**[2026] NZEmpC 2
EMPC 230/2021**

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| IN THE MATTER OF | a declaration under s 6(5) of the Employment Relations Act 2000 |
| AND IN THE MATTER OF | an application to access Court documents |
| BETWEEN | E TŪ INCORPORATED First Plaintiff |
| AND | FIRST UNION INCORPORATED Second Plaintiff |
| AND | RASIER OPERATIONS BV First Defendant |
| AND | UBER PORTIER BV Second Defendant |
| AND | UBER BV Third Defendant |
| AND | PORTIER NEW ZEALAND LIMITED Fourth Defendant |
| AND | RASIER NEW ZEALAND LIMITED Fifth Defendant |

Hearing: On the papers

Appearances: P Cranney, counsel for plaintiffs
N L Walker and E Peterson, counsel for defendants
J Page, applicant counsel

Judgment: 15 January 2026

**INTERLOCUTORY JUDGMENT (NO 4)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application to access Court documents)**

[1] An application has been made by Mr Page for access to certain documents on the Court file. Mr Page is a lawyer acting in proceedings being taken against Uber in the Federal Court in Australia. The documents are sought to assist Mr Page in his trial preparation. He says that the litigation he is involved with raises very similar issues to the Uber litigation in New Zealand. The defendants oppose the application for access; the plaintiffs abide the decision of the Court.

Approach

[2] As Mr Page correctly observes, the Employment Relations Act 2000 does not deal with access to documents held on the Court file, nor do the Employment Court Regulations 2000. It is, however, well accepted that the Court may grant access to documents held on the Court file and has an inherent power to control the use of information disclosed in proceedings, where such control is necessary for the due administration of justice. A balancing exercise is required, including having regard to each party's interests. I agree with Mr Page that applications of this sort must ultimately be decided in a manner that the Court considers will promote the object of the Employment Relations Act and the ends of justice.

[3] In undertaking the analysis, the Court has previously found it helpful to have regard to the approach set out in the Senior Courts (Access to Court Documents) Rules 2017 (the Rules). The Rules are made under the Senior Courts Act 2016. Section 173(1) of that Act provides that “[a]ny person may have access to court information of a senior court to the extent provided by, and in accordance with, rules of court”. Schedule 2 provides that court information includes the formal court record, the court file, information relating to particular cases and electronic records of hearings. Notes of evidence are held on the Court file. A person may ask to access any document under r 11 of the Rules.

[4] Rule 12 specifies a range of matters that must be considered when determining an application for access. These include the orderly and fair administration of justice; the right to bring and defend civil proceedings without the disclosure of any more information about the private lives of individuals, or matters that are commercially sensitive, than is necessary to satisfy the principle of open justice; the protection of other confidentiality and privacy interests (including those of children and other vulnerable members of the community); the principle of open justice (including the encouragement of fair and accurate reporting of, and comment on, court hearings and decisions); and the freedom to seek, receive, and impart information.

[5] Rule 13 deals with the approach to balancing the matters to be considered under r 12. The balancing act requires regard to be had to what stage the proceedings are at. So, before the substantive hearing, the protection of confidentiality and privacy interests and the orderly and fair administration of justice may require that access to documents be limited; during the substantive hearing, open justice has greater weight than at other stages of the proceeding and greater weight in relation to documents relied on in the hearing than other documents; after the substantive hearing, open justice has greater weight in relation to documents that have been relied on in a determination than other documents, but the protection of confidentiality and privacy interests has greater weight than would be the case during the substantive hearing.¹

[6] In this case, the application comes after the hearings in this Court, the Court of Appeal and the Supreme Court.²

Analysis

[7] The request is, as I have said, directed at certain documents. Mr Page has clarified the scope of the documentation in a memorandum in response to the defendant's opposition to his request. He seeks witness statements made by two witnesses for the defendants, Ms Foley and Mr Groeneveld, which discussed the way the Uber business model works, how the relationship between Uber and its drivers

¹ For a useful summary of the approach, and the weighing exercise, see *Price* [2022] NZHC 3324.

² *E tū Inc v Rasier Operations BV* [2022] NZEmpC 192, [2022] ERNZ 966; *Rasier Operations BV v E tū Inc* [2024] NZCA 403, [2025] NZLR 150, [2024] ERNZ 789; *Rasier Operations BV v E tū Inc* [2025] NZSC 162.

plays out in real terms, and how this bears on the characterisation of Uber drivers as employees or independent contractors.

[8] Mr Page points out that Ms Foley is the operational head of Uber's operations in both New Zealand and Australia. He says that the contents of the witness statements give rise to issues of consistency, which underscores the relevance of access to the evidence given in this Court.

[9] The defendants say that the fact that a proceeding is being pursued in Australia against Uber is of limited relevance to the analysis. In this regard, it is said that the applicable tests for employment status differ as between the two jurisdictions as do many of the underlying facts.

[10] While I accept that the legal framework is not on all fours, and there may (as the defendants say) be factual variations, the base issue appears to be precisely the same. As Mr Page points out, the Supreme Court in New Zealand made reference to the similarities between the test of employment status in Australia and New Zealand.³ And, as the Court confirmed in *Greymouth Petroleum Holdings Ltd v Empresa Nacional del Petroleo*, the existence of a foreign court proceeding is a recognisable and legitimate reason for a New Zealand court to grant access to its documents and there is a public interest in assisting the resolution of foreign proceedings.⁴ While access was ultimately declined in that case due to a lack of specific relevance, here there is a potential evidential inconsistency that Mr Page has identified. There are reasonable grounds to believe that this will be relevant to the control issue in the Australian jurisdiction.

[11] The defendants further submit that seeking access to the documentation via the present application is, effectively, an abuse of process because discovery is closed in the Australian proceedings. I do not see the two processes as mutually exclusive. Put another way, the fact that the documentation could be sourced by a different procedural route is of no material relevance to deciding whether access to documents held on the

³ *Rasier Operations BV v E tū Inc* [2025] NZSC 162 at [95].

⁴ *Greymouth Petroleum Holdings Ltd v Empresa Nacional del Petroleo* [2017] NZCA 490, [2017] NZAR 1617 at [36].

Court file should be permitted. It is also relevant, as Mr Page says, that the Federal Court's hearing commences on 9 February 2026, and time is accordingly of the essence.

[12] Ms Foley and Mr Groeneveld gave evidence at the substantive hearing and were cross-examined on their evidence. Briefs of evidence had been filed in advance and the witnesses read their briefs of evidence into the Court record. Mr Groeneveld made two minor amendments to his brief of evidence as it was being read; Ms Foley did not. The sections of evidence which Mr Page appears to be primarily concerned about were relied on in the Court's judgment.

[13] The evidence was given in open Court. It dealt with the personal circumstances of the individual drivers who E tū acted for in pursuing the claim and refers to a number of matters relating to Uber's commercial operations. As is submitted, privacy and commercial sensitivity concerns generally weigh more heavily following a hearing. It is, however, necessary to return to the context of the present case when assessing whether access ought to be granted.

[14] While the defendants refer to both matters (privacy and commercial sensitivity) as reasons why the application should be declined, it is notable that no suppression orders were sought by either the plaintiffs or the defendants in respect of the evidence; orders were made in respect of some of the documentation referred to in evidence, and an order was made that the Court file could not be viewed without leave of a Judge. It is also notable that the plaintiffs have raised no concerns about the disclosure of personal information in the context of Mr Page's request. Indeed, I note that Mr Page refers to having access to the plaintiffs' witnesses' briefs of evidence in these proceedings, but not the defendants'. In these circumstances, any privacy concerns in relation to the drivers that were named in the judgment, which might otherwise weigh against access, can be put to one side.

[15] That does not address legitimate concerns about the privacy interests of drivers that were not named in the judgment but who are named in the briefs of evidence. Their privacy interests are relevant to the analysis but can adequately be addressed via

other means (set out below). They do not, of themselves, justify the application being declined.

[16] I accept that provision of access to the material sought is appropriate, having regard to the reasons underlying the request. Mr Page has a legitimate and genuine interest in accessing the two briefs of evidence, and granting the application is consistent with the broader interests of justice.⁵

Result

[17] There is an order permitting access to the brief of evidence of Ms Foley and Mr Groenveld in these proceedings. The briefs are to be provided to Mr Page by the Registrar. Prior to access being granted, the Registrar is to redact the names or identifying information of any drivers that were not named in the Employment Court's judgments.

[18] No issue of costs arises.

Christina Inglis
Chief Judge

Judgment signed at 11 am on 15 January 2026

⁵ See *Pilgrim v Attorney-General (No 12)* [2022] NZEmpC 98 at [5]–[6].