



# Employment Court of New Zealand

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## Allied Investments Limited v Jones [2025] NZEmpC 111 (4 June 2025)

Last Updated: 5 June 2025

IN THE EMPLOYMENT COURT OF NEW ZEALAND WELLINGTON

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

[\[2025\] NZEmpC 111](#)

EMPC 438/2024

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for witnesses to appear via Audio-Visual Link
BETWEEN	ALLIED INVESTMENTS LIMITED Plaintiff
AND	PETER JONES Defendant

Hearing: On the papers

Appearances: S Hornsby-Geluk, counsel for the  
plaintiff T P Cleary, counsel for  
defendant

Judgment: 4 June 2025

INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN

**(Application for witnesses to appear via AVL)**

[1] This proceeding is set down to be heard in Wellington for four days beginning on Monday 16 June 2025.

[2] The plaintiff, Allied Investments Ltd, has now applied for two of its witnesses, Mathew Whibley and Alan Timms, to give evidence to the Employment Court by way of audio-visual link.

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[3] The application is made on the grounds that:

- (a) Mr Whibley is based in Hamilton and Mr Timms is based in Auckland;
- (b) The nature of the proceedings is such that the evidence to be given by the witnesses is of a peripheral (but relevant) nature. Further, the evidence to be given by each of the witnesses is brief.
- (c) The courtroom within which the case will be heard in Wellington has AVL facilities. It is proposed that both witnesses would give evidence from Allied Investments's Hamilton office or from a courtroom in Hamilton or Auckland. Accordingly, the availability and quality of the technology to be used are likely to be good.
- (d) There is unlikely to be any discernible impact on the effective maintenance of the right of other parties to the proceeding.
- (e) Mr Whibley is not an employee of Allied Investments.
- (f) The week of the hearing is particularly busy for Mr Whibley.
- (g) Mr Timms is based in Auckland and, given the length and nature of his evidence, his attendance in Wellington would seem unwarranted.

[4] Allied Investments relies on the [Courts \(Remote Participation\) Act 2010](#) and the Employment Court's guideline for

appearing via audio-visual link.<sup>1</sup>

[5] The defendant, Peter Jones, does not oppose the application.

1. [Courts \(Remote Participation\) Act 2010, ss 5 and 7](#); Employment Court “Guideline for Appearing by Audio-Visual Link, Including in Virtual Hearings” (February 2022)

<employmentcourt.govt.nz>.

### **Witnesses can give evidence via AVL**

[6] While the ordinary way for a witness to give evidence in a civil proceeding is orally in a courtroom within the presence of a judge, the parties and any interested public, there is no presumption in favour of giving evidence in that way.<sup>2</sup>

[7] In considering such an application, the Court is to apply the criteria in [s 5](#) of the [Courts \(Remote Participation\) Act](#), which are:

- (a) the nature of the proceeding;
- (b) the availability and quality of the technology that is to be used;
- (c) the potential impact of the use of the technology on the effective maintenance of the rights of the other parties to the proceeding, including:
  - (i) the ability to assess the credibility of witnesses and the reliability of evidence presented to the Court; and
  - (ii) the level of contact with other participants;
- (d) any other relevant matters.

[8] I am satisfied that using AVL for the named witnesses in the current situation is suitable. The availability and quality of the technology to be used are likely to be good. There is no reason to consider that hearing the evidence remotely will adversely impact on Mr Jones’s rights, or the proceeding.

[9] The application is accordingly granted, and the witnesses are permitted to provide their evidence via AVL from Allied Investments’s Hamilton office, located at 4 Somerset Street, Frankton.

- 2 [High Court Rules 2016, r 9.51](#); [Evidence Act 2006, s 83](#); *Wealleans v R* [2015] NZCA 353 at [34].

[10] Counsel for Allied Investments is to liaise with the Court and counsel for Mr Jones to make the necessary arrangements and ensure that the agreed bundle of documents is available when the witnesses give evidence.

[11] There is no order for costs.

Judgment signed at 11.30 am on 4 June 2025

J C Holden Judge