



Employment Court of New Zealand

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Butt v Attorney-General [2021] NZEmpC 151 (15 September 2021)

Last Updated: 22 September 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2021\] NZEmpC 151](#)

EMPC 317/2020

IN THE MATTER OF	an application to reopen file EMPC 396/2019
AND IN THE MATTER OF	an application to exclude evidence
BETWEEN	SUSHILA DEVI BUTT First Plaintiff
AND	ARTHUR ROYD WILSON BUTT Second Plaintiff
AND	THE ATTORNEY-GENERAL SUED ON BEHALF OF THE MINISTRY OF HEALTH First Defendant
AND	THE ATTORNEY-GENERAL SUED ON BEHALF OF THE HONOURABLE ANDREW LITTLE IN HIS CAPACITY AS MINISTER OF HEALTH Second Defendants

Hearing: On the papers
Appearances: A Till and J Perrott, counsel for plaintiffs
RM Rendle and T Bremner, counsel for
defendants
Judgment: 15 September 2021

INTERLOCUTORY JUDGMENT OF JUDGE KATHRYN BECK

(Application to exclude evidence)

[1] The defendants apply to the Court for an order that the affidavit of Sushila Devi Butt sworn on 25 June 2021 not be read to the extent that it contains evidence which is:

SUSHILA DEVI BUTT v THE ATTORNEY-GENERAL SUED ON BEHALF OF THE MINISTRY OF HEALTH [\[2021\] NZEmpC 151](#) [15 September 2021]

(a) subject to settlement privilege; and

(b) double hearsay and is contradicted by the affidavit of Ms Paula Wilson sworn on 4 August 2021.

[2] In relation to settlement privilege the defendants take exception to paras 6, 7, 8, 11 (to the extent that the second and final sentence relies upon para 7), and 12 of Mrs Butt's affidavit. They claim these paragraphs are subject to un-waived settlement privilege.

[3] In relation to double hearsay, the defendants take exception to para 15 of Mrs Butt's affidavit which records that Ms Wilson explained to her that "Sally had stated the two weeks training costs for me to train a replacement carer will be covered by Access instead of [the Ministry]."

[4] The plaintiffs oppose this application.

[5] The defendants have asked that I issue a judgment stating the outcome of the application as a matter of urgency, with reasons to follow later.

[6] I find that the affidavit of Mrs Sushila Devi Butt dated 25 June 2021 is admitted in its entirety.

[7] Reasons for my decision will follow.

Kathryn Beck Judge

Judgment signed at 8.30 am on 15 September 2021

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