



Employment Court of New Zealand

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Courage v Attorney-General [2022] NZEmpC 23 (11 February 2022)

Last Updated: 16 February 2022

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI

[\[2022\] NZEmpC 23](#)
EMPC 363/2021

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

AND IN THE MATTER OF an application to exclude evidence
and/or cross examine witnesses

BETWEEN HOSEA COURAGE, DANIEL PILGRIM
AND LEVI COURAGE
Plaintiffs

AND THE ATTORNEY-GENERAL sued on
behalf of the Ministry of Business,
Innovation and Employment, Labour
Inspectorate
First Defendant

AND HOWARD TEMPLE, FERVENT
STEDFAST, ENOCH UPRIGHT,
SAMUEL VALOR, FAITHFUL
PILGRIM, NOAH HOPEFUL AND
STEPHEN STANDFAST
Second Defendants

AND FOREST GOLD HONEY LIMITED AND
HARVEST HONEY LIMITED
Third Defendants

AND APETIZA LIMITED
Fourth Defendant

Hearing: On the papers

Appearances: B P Henry, D Gates and A Kenwright, counsel for
plaintiffs J Catran and A Piaggi, counsel for first
defendant
S G Wilson, counsel for second, third and fourth
defendants R Kirkness, counsel to assist the Court

Judgment: 11 February 2022

HOSEA COURAGE, DANIEL PILGRIM AND LEVI COURAGE v THE ATTORNEY-GENERAL sued on
behalf of the Ministry of Business, Innovation and Employment, Labour Inspectorate [\[2022\] NZEmpC 23](#) [11 February 2022]

INTERLOCUTORY JUDGMENT (NO 4) OF CHIEF JUDGE CHRISTINA INGLIS

(Application to exclude evidence and/or cross examine witnesses)

[1] Issues have arisen in relation to affidavit evidence filed on behalf of the Attorney-General. The plaintiffs contended that the evidence should be excluded and if not excluded leave should be granted to cross-examine on it.

[2] Since the relevant application and notice of opposition were filed, counsel for the Attorney-General and the plaintiffs have resolved a number of issues between themselves and prepared a joint memorandum setting out the areas of agreement and the area of disagreement. I provided the remaining defendants with an opportunity to be heard, and a memorandum has been filed advising that the second, third and fourth defendants are agreeable to the suggested approach to admissibility advanced in the joint memorandum and otherwise generally supported the approach advanced on behalf of the Attorney-General in respect of the area of disagreement.

[3] In relation to the matters on which the parties agree, I am satisfied that it is appropriate to proceed on the proposed basis. Accordingly, the following directions and orders are made:

- The evidence regarding the conclusions in the Labour Inspectors' investigations, so far as it purports to answer the question being determined by the Court, is admissible under [s 189\(2\)](#) of the [Employment Relations Act 2000](#) but is subject to the weight that should be accorded to it in the discretion of the Court (noting that counsel are agreed that such opinion should have little or no weight).
- The evidence in so far as it records the observations of the witnesses when they visited Gloriavale is admissible. In so far as relevant to the question to be determined this evidence may be the subject of cross-examination by all parties – this includes, for example, the layout of Gloriavale, the nature

of the factories that they visited, the nature of the reaction by the second defendants to the Labour Inspectorate's visits and the absence of workers noted in the reports when visiting industrial sites (noting that it is agreed between counsel that this is a confined right of cross-examination and is not to allow cross-examination in regard to the wider tortious claim pleaded).

- Any cross-examination of the deponents of the affidavits filed on behalf of the Attorney-General will occur after evidence has been called by the plaintiffs and the second, third and fourth defendants.

[4] The remaining issue of dispute between the Attorney-General and the plaintiffs relates to the admissibility of tables of interviews conducted by Labour Inspectors of a number of people who remain in Gloriavale and interviews with leavers, annexed to two affidavits filed on behalf of the Attorney-General.

[5] The plaintiffs dispute the admissibility of the tables and interviews on the basis of relevance. The second, third and fourth defendants say that the interviews form an important part of the background and context and are likely to assist the Court in obtaining an overall picture of life at Gloriavale.

[6] The starting point in determining disputes as to what material should and should not be put before the Court is [s 189\(2\)](#) of the [Employment Relations Act](#). It confers a broad discretion on the Court to call for and admit evidence and information. As Mr Kirkness, counsel assisting the Court, observes, this Court's discretion is led by the principles of equity and good conscience and enables the Court to undertake a broader assessment than would otherwise be possible under strict rules of evidence.¹ Ms Catran, counsel for the Attorney-General, adopted a similar approach. The key point is that while the principles applying under the formal rules of evidence contained within the [Evidence Act 2006](#) may provide useful guidance in deciding what evidence and/or information to admit, that is unlikely to be the start and finish of the inquiry.

¹ Citing *Lyttleton Port Co Ltd v Pender* [\[2019\] NZEmpC 86](#), [\[2019\] ERNZ 224](#) at [\[52\]- \[53\]](#).

[7] It is undesirable and contrary to the broader interests of justice for hearings to be bogged down with evidence which is irrelevant. That objection applies as much in the Employment Court as any other Court, and [s 189](#) does not provide a means of circumnavigating that threshold. In the present case, the evidence contained in the affidavits which the plaintiffs object to cannot accurately be described as plainly irrelevant to the matters at issue, namely whether the plaintiffs were employees of the second, third and/or fourth defendants. And while it might be said that the evidence is not directly relevant, a broader inquiry is necessary.

[8] I agree with Mr Henry, counsel for the plaintiffs, that if the first defendant is seeking to rely on the contents of the interview tables to prove the truth of their contents that is objectionable. The interviewees are not before the Court and there is nothing to suggest that they are unavailable to give evidence. Ms Catran has however made it clear that the table is not being produced for that purpose – rather it is being produced to assist the Court in understanding the broader context.

[9] I agree with Mr Kirkness that it is premature to decide the objection to the evidence at this point. Relevance is a particularly difficult issue to determine in advance, and applications to exclude evidence on that basis are often reflective of the lens that the applicant party brings to the proceedings.² It is possible (although not entirely clear at this stage) that the evidence will assist the Court and I think it appropriate to allow it in on a provisional basis, reserving leave for any party to address the Court further on the objection at hearing, if any concerns remain. Orders are made accordingly.

[10] Costs are reserved.

Christina Inglis Chief Judge

Judgment signed at 4.05 pm on 11 February 2022

2. See for example *Cridge v Studorp Ltd* [2020] NZHC 794 at [12]; *Minister of Education v Carter Holt Harvey Ltd* [2020] NZHC 1539 at [12]- [13], noting the difficulties associated with seeking to assess relevance in advance of trial.

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