IN THE EMPLOYMENT COURT OF NEW ZEALAND
WELLINGTON

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

[2026] NZEmpC 29
EMPC 453/2024

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for leave to file further submissions after a hearing
BETWEEN	ALEXIS ALLAN LÓPEZ Plaintiff
AND	KĀRIKI PHARMA LIMITED (IN LIQUIDATION) First Defendant
AND	ALEXANDRA LUCIE AIMER SETON Second Defendant
AND	PAUL FREDERICK SETON Third Defendant

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BETWEEN	ALEXANDRA LUCIE AIMER SETON First Plaintiff
AND	PAUL FREDERICK SETON Second Plaintiff
AND	ALEXIS ALLAN LÓPEZ First Defendant
AND	KĀRIKI PHARMA LIMITED (IN LIQUIDATION) Second Defendant

Hearing:	On the papers
Appearances:	E Butcher and T Preston, counsel for Ms López S Langton and RL White, counsel for Ms Seton and Mr Seton No appearance for Kāriki Pharma Ltd
Judgment:	23 February 2026

INTERLOCUTORY JUDGMENT (NO 3) OF JUDGE KATHRYN BECK
(Application for leave to file further submissions after a hearing)

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[1] These proceedings involve non-de novo challenges by both parties to a determination of the Employment Relations Authority.[1]

[2] This application relates to a narrow aspect of Ms and Mr Seton's challenge to the determination.

[3] As part of the determination, the Authority awarded Mr López payment of salary for the month of July 2020. Ms and Mr Seton challenge that and other findings. However, for the purposes of this application, only the narrow point in relation to payment of the salary is relevant.

[4] The hearing of the challenges took place over a number of days. The Court heard evidence on 27 to 29 August and 12 September 2025. Closing submissions of counsel were presented on 30 October 2025.

[5] On 6 November 2025, Mr López filed an application, together with a supporting affidavit, which sought to introduce into evidence documents that were not previously before the Court, being his bank statements for the period 12 July to 30 August 2020. He says these records support his evidence that he did not receive payment of his July 2020 salary entitlement.

[6] The primary ground for Mr López's application is that he erroneously believed he could not access bank records more than two years old. Following a discussion

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1 *Lopez v Kariki Pharma Ltd* [2024] NZERA 626.

between the Court and his counsel during closing submissions, I suggested that banks hold records for six years. Mr López was prompted to access the records and found he was able to do so. He says the bank records are highly relevant to a discrete point in question, that a decision has not yet been issued, and that it would be in the interests of fairness and justice to allow him to produce the bank statements now. He says that Ms and Mr Seton would not suffer any unfairness because the documents present a full picture to the Court and to them.

[7] Ms and Mr Seton oppose the application on a number of grounds. Their primary objection is that Mr López failed to exercise due diligence in obtaining the intended evidence. They say that the delay is inadequately explained and that there are no exceptional circumstances that would justify the Court exercising its discretion in his favour. They have not had the opportunity to test the intended evidence and if the application was to be granted, they should be provided with an opportunity to do so, including by recalling Mr López. However, they say that this would unreasonably delay the conclusion of these proceedings and put them to unnecessary time and cost, and that it is in the interests of justice that the application is dismissed.

Legal principles

[8] Under s 189 of the Employment Relations Act 2000 (the Act), the Court may accept, admit, and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not.

[9] In *Lorrigan v Infinity Automotive Ltd (No 5)*, the Court confirmed that:[2]

> It is well established that parts of the Evidence Act 2007 (the EA), and even remnants of common law of evidence, can affect and guide the exercise of the equity and good conscience test which arises under s 189(2).

[10] While the Court's practice directions outline the approach to final submissions following the conclusion of a hearing,[2] there is no guidance for how evidence may be introduced after the closure of a hearing.

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2 *Lorrigan v Infinity Automotive Ltd (No 5)* [2018] NZEmpC 143 at [9].

[11] The Evidence Act 2006 is therefore instructive. Section 98 of the Evidence Act codifies the general rule prohibiting further evidence from a party after that party's case is closed. In relation to civil proceedings, s 98 provides:

> **98 Further evidence after closure of case**
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> (1) In any proceeding, a party may not offer further evidence after closing that party's case, except with the permission of the Judge.
>
> (2) In a civil proceeding, the Judge may not grant permission under subsection (1) if any unfairness caused to any other party by the granting of permission cannot be remedied by an adjournment or an award of costs, or both.
>
> …
>
> (5) The Judge may grant permission under subsection (1),—
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> (a) if there is a jury, at any time until the jury retires to consider its verdict:
>
> (b) in any other proceeding, at any time until judgment is delivered.

[12] The starting point under s 98 is that evidence is not to be offered without permission. Subsections (2) and (5) then permit discretionary departure from that starting point, but only where unfairness cannot be remedied by an adjournment, costs award, or both.

[13] In *Jackson v Te Rangi*, Duffy J described the discretion in s 98 as broad and observed that the common law principles for the admission of this type of evidence provide helpful guidance.[3] *Equitcorp v Hawkins* was referred to, which sets out a helpful summary of the relevant common law principles, namely:[4]

(a) The discretion should be exercised sparingly once the cases on both sides have closed and leave should only be given in exceptional circumstances.

(b) Only if the failure to call evidence at the proper time is adequately explained should the discretion be exercised.

(c) The justice of the case must require the admission of the additional evidence.

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3 *Jackson v Te Rangi* [2014] NZHC 2981, [2015] 2 NZLR 351 at [112].

4 *Equitcorp Industries Group Ltd (in stat man) v Hawkins* [1996] 2 NZLR 82 (HC) at 85.

(d) Leave will be refused if the evidence would have been available had due diligence been exercised.

(e) If the party is taken by surprise, leave will be more readily granted.

(f) The difference between a failure to tender evidence, and an election not to, can be important.

[14] In *Savill v Chase Holdings (Wellington) Ltd*, Tipping J added the following principles to those referred to above:[5]

(a) The Court should consider whether the new evidence could with reasonable diligence have been adduced at the trial or whether the party seeking to adduce the further evidence has shown on a reasonable basis that he did not earlier appreciate its significance.

(b) The Court should consider whether the new evidence is such as will either (a) be conclusive of the case; or (b) at least be likely to have a substantial bearing on a central issue.

(c) The Court should consider from the nature of the new evidence sought to be adduced how credible and reliable it is likely to be.

[15] Those common law principles should not be treated as rigid criteria which must be met in the context of an application to offer further evidence under s 98.[6] In this Court, that is consistent with the notion that s 189 prevails and the admission of evidence is ultimately guided by equity and good conscience.

Submissions

[16] As noted above, Mr López has filed an affidavit explaining why the evidence was not produced during the hearing. He says he did not appreciate that he was able

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5 *Savill v Chase Holdings (Wellington) Ltd* [1989] 1 NZLR 257 (HC) at 291–292.

6 *PBL Solutions Ltd v AFT Pharmaceuticals Ltd* [2023] NZHC 881 at [30]–[31] citing *Lindsay v Nobel Investments Ltd* [2014] NZHC 799 at [123].

to obtain bank statements from this period until it was raised at the hearing. Further, he believed that it was a minor point in the overall proceeding, and that Kāriki Pharma Ltd's failure to provide wage and time records created a presumption in his favour.

[17] Emails were produced during the hearing which tended to support Ms and Mr Seton's position that payment had been made. Mr López argues that the prejudice resulting from the exclusion of the evidence would be significant as it is directly relevant to whether the payment was made. He says he would be unduly prejudiced if the evidence is not allowed to be admitted, whereas Ms and Mr Seton would not be prejudiced. He says that the evidence is independent (being records created by a bank) produced by way of a sworn affidavit and that no further evidence or cross-examination is required. He says it is in the interests of justice to grant leave.

[18] Ms and Mr Seton oppose the application to introduce new evidence, although they do not dispute its relevance. They say this is not a case where the intended evidence was unavailable; it has been available to Mr López since before he made his claims when he resigned in July 2022. They say he has had multiple opportunities to produce this information and his stated reasons for not doing so are insufficient and implausible. They say there are no exceptional circumstances that would justify the Court exercising its discretion and that the costs of dealing with this issue now, and the additional steps that would be required to verify the evidence, are disproportionate to the amount at stake ($6,661.61).

Analysis

[19] As noted above, the discretion to admit evidence after the conclusion of a hearing is to be exercised sparingly. Section 98 of the Evidence Act directs that leave should only be granted in exceptional circumstances; however, s 189 of the Act allows for the introduction of evidence as long as it is consistent with equity and good conscience.

[20] I agree with Ms and Mr Seton that Mr López has not provided a satisfactory explanation for his failure to produce this evidence earlier. Accessing the documentation was not difficult; the bank statements could have been obtained via

online banking, or, had inquiries been made, through the bank itself. Due diligence on the part of Mr López could have disclosed this relevant evidence earlier. Ms and Mr Seton's frustration at the delay is therefore understandable.

[21] Ms and Mr Seton submit that if the evidence is admitted, a verification process would be necessary and they would need to test the evidence. While I doubt the need for a full verification process, I take their point on the need to test the evidence. Further, the document is currently heavily redacted.[7]

[22] Such factors count against allowing the application. However, that is not the end of the inquiry.

[23] The evidence in question is relevant in relation to the narrow point of whether the July 2020 salary was paid. If this is the bank account into which Mr Lopez's salary was paid, it would appear to corroborate his claim that he was not paid for that month. While there are no wage and time records, email correspondence around the time appeared to indicate that such payment had been made. Accordingly, the document is not necessarily conclusive but it is directly material to the disputed fact and is likely to have a substantial bearing on the outcome in relation to that issue.

[24] However, I must weigh the probative value of the documents against the prejudice their late admission may cause to Ms and Mr Seton.

[25] Such evidence could not be admitted without granting them a fair opportunity to respond. Ms and Mr Seton have emphasised the lack of due diligence exercised by Mr López and the policy considerations in relation to the importance of finality and fairness in litigation. They submit that fairness can only be achieved by more processes being directed to ensure that the evidence is tested.

[26] They suggest that a proportional response, taking into account the costs and the quantum involved (one month's salary), means that it would be disproportionate to allow the evidence to be admitted.

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[7] Counsel for Mr López has offered to provide an unredacted version if it would assist the Court.

[27] I agree that this is finely balanced. A number of factors count against allowing the application.

[28] While finality and fairness in litigation are of the utmost importance, where a document is likely to have a substantial bearing on the outcome, as this one would, the interests of justice count strongly in favour of admission. To refuse leave in these circumstances would be inconsistent with equity and good conscience. However, I agree that this cannot happen without Ms and Mr Seton being granted a fair opportunity to respond.

Outcome

[29] The application is granted.

[30] The parties should confer as to what further steps, if any, should be taken. However, if they are unable to agree, a directions conference will be convened. The point made by Ms and Mr Seton in relation to proportionality is well made and I encourage the parties to reflect on that in discussing next steps.

[31] In relation to costs, Mr López has sought a significant indulgence in this instance and while he has been successful, his lack of timeliness should be addressed in costs. Ms and Mr Seton are entitled to costs in respect of this application, which can be dealt with once a final decision is delivered.

Kathryn Beck
Judge

Judgment signed at 4.30 pm on 23 February 2026