



Employment Court of New Zealand

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Hall v Dionex Pty Limited [2014] NZEmpC 127 (11 July 2014)

Last Updated: 17 July 2014

IN THE EMPLOYMENT COURT AUCKLAND

[\[2014\] NZEmpC 127](#)

ARC 66/12

IN THE MATTER OF proceedings removed

AND IN THE MATTER application to extend time for
 filing evidence in reply

BETWEEN PETER DAVID HALL Plaintiff

AND DIONEX PTY LIMITED
 Defendant

Hearing: Following a telephone conference call held at 3.30
 pm on
 11 July 2014
 (Heard at Auckland)

Appearances: T Drake, counsel for plaintiff
 M King, counsel for defendant

Judgment: 11 July 2014

INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] The matter now before the Court is an application to extend time for filing evidence in reply. The application is opposed by the plaintiff, for reasons set out in a memorandum of counsel filed today. The application was heard this afternoon, and granted. My reasons for granting the application follow.

[2] These proceedings are part heard. The hearing was scheduled to recommence on 16 June 2014. Just prior to that date the plaintiff filed an application for leave to file an additional brief of evidence, from a Mr Ayers. That application was granted (over the defendant's opposition) but the hearing was further adjourned to provide the defendant with an opportunity to consider the additional evidence and file any

evidence in reply. The defendant was given 20 working days to do so, and leave was

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reserved for either party to apply on reasonable notice for any further directions or orders. At the time those orders were made counsel for the defendant made it clear that there may be some difficulties associated with locating and briefing witnesses (who resided overseas) to respond to the matters raised in Mr Ayers' brief of evidence. The timeframe for filing has now expired, although the defendant's application was filed within time.

[3] The grounds on which an extension of time is sought are set out in a memorandum of counsel and were expanded on by Ms King, counsel for the defendant, during the course of the hearing. It is evident that there have been difficulties associated with briefing the proposed evidence in reply, including because one of the witnesses (who has already given evidence) is currently on maternity leave and has not been well. Although another witness (who is not in the defendant's employ) has now been located in Australia, his

evidence has not yet been able to be finalised. The defendant is also attempting to locate the plaintiff's laptop computer and, if it is found, it may be subjected to examination. These steps, it is said, are necessary to respond to the matters that were belatedly raised on behalf of the plaintiff through Mr Ayers' brief. There have also been difficulties with obtaining instructions as Ms Bondini is currently in Vietnam, and will not be available until next week.

[4] Mr Drake, counsel for the plaintiff, opposes the application. He submits that the application is unsupported by evidence and without proper explanation for why the intended evidence in reply could not be finalised within time. He further submits that the plaintiff will suffer prejudice if the application is granted.

[5] The difficulties that the defendant has confronted are adequately explained in the material before the Court. I do not accept that the plaintiff will be unduly prejudiced if the application is granted. The extension is a relatively modest one – to

31 July 2014 – and no new dates have yet been allocated for the hearing. It may be that additional time will be required, depending on the extent of the evidence in reply, but if additional time is required to allow the defendant to respond to the matters now raised on the plaintiff's behalf that can hardly be objectionable. And any increased costs can be dealt with in the usual manner, as appropriate. The reality

is that it was the plaintiff who sought an indulgence from the Court to file further evidence and his ability to complain about the defendant's wish to provide a proper response to it is constrained.

[6] Issues were raised about the possibility of the plaintiff's laptop being examined. Mr Drake submitted that if the laptop is located it should not be able to be produced. He also raised a concern that the defendant was seeking to re-open the case and traverse ground that ought already to have been covered. These concerns are, at this stage, speculative. The evidence in reply must be just that – in reply. But it would be premature to seek to deal with issues that have not yet arisen, and may not (if the computer cannot be located).

[7] I am satisfied that it is in the interests of justice that the application for an extension be granted. Accordingly, leave is granted to the defendant to file and serve any reply briefs of evidence no later than 4.00 pm on 31 July 2014.

[8] Leave is reserved for either party to apply, on reasonable notice, for any further directions or orders.

[9] Costs on this application are reserved.

Christina Inglis

Judge

Judgment signed at 4.45 pm on 11 July 2014