



Employment Court of New Zealand

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Halse v Employment Relations Authority [2023] NZEmpC 215 (30 November 2023)

Last Updated: 7 December 2023

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2023\] NZEmpC 215](#)

EMPC 25/2022

IN THE MATTER OF	an application for judicial review
AND IN THE MATTER OF	an application for stay of proceedings
AND IN THE MATTER OF	an application for a non-publication order
BETWEEN	ALLAN GEOFFREY HALSE Applicant
AND	EMPLOYMENT RELATIONS AUTHORITY First Respondent
AND	FIRST SECURITY GUARD SERVICES LTD Second Respondent
AND	AN EMPLOYEE Third Respondent

Hearing: On the papers
Appearances: Applicant in person
No appearance for respondents
S Jerebine, counsel assisting the Court
Judgment: 30 November 2023

INTERLOCUTORY JUDGMENT (NO 3) OF JUDGE B A CORKILL

(Application for stay of proceedings) (Application for a non-publication order)

Introduction

[1] The issue I must resolve is whether a stay should be granted until resolution of overlapping Court of Appeal proceedings.

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[2] In two earlier interlocutory judgments, I set out the background of this judicial review proceeding.¹ The case arose from an investigation involving an employee for whom Mr Allan Halse and CultureSafe NZ Ltd (now in liquidation) (CultureSafe) were acting on the one hand, and an employer, First Security Guard Services Ltd (First Security), on the other.

[3] During that investigation, the Employment Relations Authority made orders, with regard to Mr Halse and CultureSafe,

which required them:

- (a) not to make or threaten to make any public comment about First Security and its management or the Authority's investigation;
- (b) to take down any public postings made on their website and social media platforms touching on the employment relationship between the parties or the Authority's investigation; and
- (c) to cease and desist from contacting First Security and its management directly regarding the employee, with communications regarding her to be sent only to its lawyers; such communications were not to be copied to First Security or its management.

[4] The present judicial review proceedings relate to the legitimacy of the orders, which Mr Halse asserts were improperly made.

[5] In February 2023, the Court was advised that agreements had been reached between Mr Halse and First Security, as well as the employee. The agreements settled the claims made in this proceeding in respect of those parties, with no issue as to costs.

[6] However, Mr Halse indicated that his claim against the Authority was still unresolved. The Authority, via its counsel, confirmed it would take no step in this proceeding.

1. *Halse v Employment Relations Authority* [2022] NZEmpC 165, [2022] ERNZ 782; and *Halse v Employment Relations Authority (No 2)* [2023] NZEmpC 54.

[7] The issue which the Court was then required to consider was whether the claim was moot in all the circumstances.

[8] I determined that a contradictor should be appointed so that the issue of mootness, and any other issues in the proceeding, could be tested.² The Solicitor-General appointed Ms Jerebine to undertake that role.

Issues in advancing the proceeding

[9] I received submissions as to mootness, but that issue has yet to be considered for two reasons.

[10] The first is that in May 2023, Mr Halse told the Court he was filing a judicial review proceeding in the Court of Appeal which would be relevant to this proceeding. I considered it appropriate to defer any further steps in this proceeding until judgment was received from the Court of Appeal on Mr Halse's judicial review application.

[11] From time to time since then, the Court has sought advice from Mr Halse as to the status of his judicial review proceeding in the Court of Appeal. Most recently, I have received a copy of a minute of Miller J, dated 9 October 2023, in which he directed the Registrar of that Court to set down a strike-out application in respect of that proceeding, being an application brought on the Court's own motion.³

[12] The second issue relates to an extended order made by Moore J under [s 166\(4\)](#) of the [Senior Courts Act 2016](#). The order restrains Mr Halse from "... commencing or continuing civil proceedings on [the matter which was before the High Court] or any related matter in any senior Court, another Court or Tribunal."⁴

[13] Ms Jerebine, in a memorandum filed on 8 August 2023, submitted that the extended order precluded Mr Halse from proceeding further with the present judicial review application.

² *Halse v Employment Relations Authority (No 2)*, above n 1, at [28].

³ *Halse v Employment Court of New Zealand* CA 253/2023, 9 October 2023 at [2]–[3].

⁴ *Halse v Rangiura Trust Board* [2023] NZHC 1519 at [118].

[14] Mr Halse strongly contested this conclusion, and also said there was no proper basis for making the extended order in any event. He says an appeal in respect of the order was filed in the Court of Appeal on 17 July 2023; it has yet to be set down for hearing.

[15] The Court was initially told that an application for stay of the extended order had been or would be filed. However, Isac J confirmed that the Registrar was not permitted to receive an application for stay, given the terms of the extended order.⁵ Accordingly, there is no stay.

Should this proceeding be stayed in all the circumstances?

[16] Recently, I advised Mr Halse and Ms Jerebine by minute that I was considering making a formal order of stay of this proceeding until the two Court of Appeal proceedings had been resolved, since either one or other could impact on the question of whether this proceeding could go further. I invited submissions.

[17] Mr Halse told the Court that he has now been advised the judicial review proceeding issued in the Court of Appeal is not now considered to be relevant to this proceeding. Ms Jerebine agrees that those proceedings are not relevant to the judicial review application in this Court, and confirms there is no obvious reason to wait for delivery of a judgment from that Court.

[18] Accordingly, consideration of that particular proceeding can be placed to one side.

[19] Mr Halse also repeated his view that the extended order made under the [Senior Courts Act](#) is of no relevance to the present proceeding and that there is accordingly no reason why this case should not now proceed.

[20] Ms Jerebine emphasised her earlier submissions to the effect that a large part of Mr Halse's claim in this proceeding concerns challenges to the legality of non-

5 *Halse v Rangiura Trust Board* [2023] NZHC 2495.

publication orders, which was also part of the particular matter that was the subject of the extended order.

[21] She submitted that the [s 166](#) restraining order operates unless and until it is overturned on appeal. She said it would appear to be prudent to wait for determination of that appeal so that any clarifications provided by the Court of Appeal, for example as to the scope of the restraining order, could then be considered by this Court before proceeding further.

Analysis

[22] I proceed on the basis that, when considering the possibility of making a stay order, I must evaluate where the interests of justice lie, given the fact that the Court of Appeal is to consider whether the extended order should have been issued.⁶

[23] Although Mr Halse has argued that the restraining order would not extend to a proceeding such as the present, the converse is in my view arguable in light of Ms Jerebine's submissions.

[24] If the extended order is in fact a restraint relating to this proceeding, then Mr Halse is simply not permitted to advance this case.

[25] Accordingly, I accept Ms Jerebine's submission that the prudent course is to wait until the Court of Appeal has determined the appeal brought by Mr Halse.

[26] In all the circumstances, I make an interim order of stay until such time as the Court of Appeal issues its judgment with regard to the extended order appeal.

[27] Mr Halse is to advise the Court when a judgment is issued by the Court of Appeal on his [s 166](#) appeal. If he elects to discontinue that appeal, he should inform the Court accordingly. It would then be necessary for this Court to reach its own view as to the scope of the extended order and, subject to the outcome of that issue, as to whether the proceeding is moot.

6. Relevant principles are set out in *Te Whatu Ora – Health New Zealand v CultureSafe NZ Ltd (in liq)* [2023] NZEmpC 161 at [7]–[9].

Application for non-publication order concerning third respondent

[28] Mr Halse has applied for a non-publication order in respect of the third respondent. He submitted that she was named in these proceedings only by virtue of being involved in the original employment dispute. He notes that the employment relationship problem between the second and third respondents has been settled.

[29] He said the third respondent is attempting to establish a new career and identification of her in these proceedings would have a serious and detrimental effect on her current employment.

[30] Ms Jerebine submitted there is plainly jurisdiction to make such an order. She said that arguably, the concept of open justice does not apply so readily when the third respondent is not herself pursuing a claim.

[31] She also submitted that case-specific adverse consequences had been set out. She also noted that there could be some

reputational harm to the third respondent which should also be considered.

[32] I am satisfied that it is appropriate for the Court to exercise its discretion to make the order sought. The third respondent will be identified as “the employee” in these proceedings.

[33] Costs are reserved.

B A Corkill Judge

Judgment issued at 12 pm on 30 November 2023

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