



Employment Court of New Zealand

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Lai v Gray [2023] NZEmpC 58 (13 April 2023)

Last Updated: 19 April 2023

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

[\[2023\] NZEmpC 58](#)

EMPC 394/2022

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for a stay of execution
BETWEEN	MATTHEW LAI Plaintiff
AND	DAVID GRAY Defendant

Hearing: On the papers
Appearances: A O'Connor, counsel for plaintiff P
Mathews, advocate for defendant
Judgment: 13 April 2023

INTERLOCUTORY JUDGMENT OF JUDGE K G SMITH

(Application for a stay of execution)

[1] In the Employment Relations Authority David Gray established that he was unjustifiably dismissed by Matthew Lai.¹ The Authority ordered Mr Lai to pay to Mr Gray \$7,500 compensation pursuant to [s 123\(1\)\(c\)\(i\)](#) of the [Employment Relations Act 2000](#) (the Act) and a further amount of \$2,280 pursuant to [ss 123\(1\)\(b\)](#) and [128](#) of the Act.

[2] Subsequently the Authority ordered Mr Lai to pay costs to Mr Gray of \$2,321.56.2

[3] Mr Lai has challenged both determinations and seeks to set them aside. Both challenges are defended by Mr Gray.

[4] Mr Lai has now applied for an order staying execution of the Authority's determinations.

[5] It is appropriate at this juncture to briefly review the procedural steps that have been taken leading up to the application being filed and this decision. On 8 February 2023, timetable directions were made to enable the application for the stay to be considered and a decision made on the papers. Under that timetable the plaintiff's application for a stay was to be filed no later than 22 February 2023. Other directions were made about filing a notice of opposition and to allow for exchanges of submissions. The parties agreed to the dates on which the directed steps were to occur and to have the application for a stay dealt with on the papers.

[6] On 22 February 2023, the timetable was amended at the plaintiff's request. A brief extension of time was granted until 4 pm on 24 February 2023. Amended directions were also made adjusting the time within which a notice of opposition and any affidavit in support could be filed. No other changes were made to the directions.

[7] The plaintiff's application was filed as directed and it was opposed. The grounds he relied on were not specified in the application. Instead, it cross-referenced to grounds in an accompanying affidavit.

[8] In fact, what the plaintiff filed was in the form of an affidavit but it was unsworn. Despite that difficulty, the plaintiff has not subsequently filed, or sought an opportunity to file, a sworn affidavit.

[9] The grounds appearing in the draft affidavit were said to be that the challenge would be rendered ineffectual if a stay was not granted; the challenge was brought in

good faith, the defendant would not be affected injuriously and the balance of convenience favoured granting an order.

[10] The directions provided an opportunity for submissions to be filed supporting the application, but they were not filed. On 4 April 2023, I issued a minute informing the parties that the application would be dealt with on the papers that had been filed.

[11] The principles applying to an application for a stay are well established. A challenge does not operate as a stay of the execution of a determination.³ The overarching consideration is whether granting a stay will be in the interests of justice. A range of factors is usually taken into account in that assessment including:

- (a) Whether the challenge will be rendered ineffectual if the stay is not granted.
- (b) Whether the challenge is brought and pursued in good faith.
- (c) Whether the successful party at first instance will be injuriously affected by a stay.
- (d) The extent to which a stay would impact on third parties.
- (e) The novelty and/or importance of the question involved.
- (f) The public interest in the proceeding.
- (g) The overall balance of convenience.

[12] In the absence of submissions for the plaintiff or evidence from him explaining why the application was made and the basis for his views that a stay is appropriate he cannot establish that granting one would be in the interests of justice.

[13] The application is unsuccessful and it is dismissed.

[14] Costs are reserved.

K G Smith Judge

Judgment signed at 3.00 pm on 13 April 2023

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