



Employment Court of New Zealand

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Lawson v New Zealand Transport Agency [2016] NZEmpC 25 (22 March 2016)

Last Updated: 6 April 2016

IN THE EMPLOYMENT COURT AUCKLAND

[\[2016\] NZEmpC 25](#)

EMPC 127/2015

IN THE MATTER OF a challenge to a determination of
the
Employment Relations Authority

BETWEEN TERE LAWSON Plaintiff

AND NEW ZEALAND TRANSPORT
AGENCY
Defendant

Hearing: On the papers and by way of telephone hearing on 18
March
2016

Appearances: T Lawson, plaintiff
G Cain, counsel for defendant

Judgment: 22 March 2016

INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE CHRISTINA INGLIS

[1] Mr Lawson seeks a 15 working day extension of time to file a notice of withdrawal of his challenge or alternatively to make payment into Court. This application follows from earlier orders made by the Court on 29 September 2015.¹

[2] While Mr Lawson was given a period of 135 days to make payment into Court, and was clearly advised of the consequences of not doing so, he did not make the payment within the specified timeframe. Rather he wrote to the Court advising that he was not in a position to pursue his challenge and intended re-focussing on other things. It appeared from that correspondence that Mr Lawson was seeking to withdraw his proceedings and, in these circumstances, a period of 10 working days

was provided to him to enable him to file the requisite notice. Just prior to the

¹ *Lawson v NZ Transport Agency* [\[2015\] NZEmpC 168](#).

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expiration of that period, Mr Lawson filed a memorandum updating the Court on his personal circumstances. In the memorandum he advised that he might now have access to sufficient funds to make payment into Court, but was not yet in a position to confirm that. He expected to be able to provide confirmation of what he wished to do within 15 working days. He accordingly sought an extension of time to either file a notice of withdrawal or to pay the \$17,500 into Court.

[3] The defendant advised, by way of memorandum, that it did not consent to the extension of time. A telephone hearing was convened to deal with the application.

[4] Although a number of issues were raised during the course of the telephone hearing, counsel for the defendant has since clarified that the only matters it wishes to advance are set out in its earlier memorandum, together with concerns relating to the length of time

since the original orders were made, the absence of any payment to date and prejudice. The defendant accepts that the Court may extend time in the

present case if it considers that it would be in the interests of justice to do so.² Its

primary point is that it would not be in the interests of justice to extend time because of the prejudicial effect of any extension to it and having regard to the desirability of preserving the integrity of Court orders.

[5] Mr Lawson is confident that he will have confirmation of access to the necessary funds within a fairly short space of time, namely through a family member in Australia on 6 April 2016. Mr Lawson has made it clear that on that date he will know whether he has the funds at his disposal and whether he is wishing to make the payment into Court, or whether he wishes to file a notice of withdrawal. If the money is available, and if he decides to make payment into Court, a few extra days will be required to ensure the transfer of funds.

[6] As counsel for the defendant points out, the plaintiff was given a generous timeframe within which to meet the original order, and since that time has effectively

had a further grace period. The defendant further points out, correctly, that the

² Reference may be made to [s 221](#) of the [Employment Relations Act 2000](#), which provides that in order to enable the Court to more effectually dispose of any matter before it according to the substantial merits and equities of the case it may, at any stage of the proceedings, upon such terms as it thinks fit, extend the time within which anything is to be done.

timeframe specified in the original order was set having regard to Mr Lawson's personal circumstances and the potential prejudicial effect of ongoing delays to the defendant. The approach taken reflected a pragmatic attempt to balance the interests of the parties having regard to the circumstances at the time. The defendant submits that to provide a further period of time to the plaintiff, after already having provided an extended period for payment in the original timeframe, "tips the balance" and the application ought to be declined. The particular prejudice identified by the defendant is in respect of the likely negative impact of delay on witness recall.

[7] While I accept that the defendant is in a difficult position and ongoing delays are undesirable, the overriding consideration must be the interests of justice. There is an obvious interest in ensuring that timeframes and identified consequences of orders made by the Court are observed. The initial timeframe was a deliberately long one. However the extension itself is not overly lengthy. There is no suggestion that records have been destroyed or any of the defendant's proposed witnesses will be relying solely on memory. Indeed if the usual practice was followed in the Authority, they will have filed witness briefs in that forum. The Court will be in a position to accommodate an early fixture if the challenge proceeds. Declining the request for an extension risks injustice to Mr Lawson, in circumstances where his personal circumstances have changed since the making of the original orders and his subsequent indication that he wished to withdraw his challenge. Mr Lawson has not deliberately ignored or flouted the Court's orders. It is plain that he wished to make the payment but was not in a position to do so.

[8] I am satisfied that it is in the overall interests of justice that an extension of time be granted for Mr Lawson either to make payment of \$17,500 into Court or to file a notice of withdrawal. The extension of time will be until 5pm on 11 April

2016, to build in sufficient time for the transfer of funds if Mr Lawson proceeds down this route. If the payment is not made within that timeframe, the stay of the Authority's costs determination will lapse and the costs determination will become enforceable against Mr Lawson. In addition, the defendant may apply to the Court for further orders.

[9] While Mr Lawson was seeking an indulgence of the Court, I do not understand the defendant to be seeking costs and none are ordered in the particular

circumstances.

Judgment signed at 10.15 am on 22 March 2016

Christina Inglis
Judge