



# Employment Court of New Zealand

You are here: [NZLII](#) >> [Databases](#) >> [Employment Court of New Zealand](#) >> [2017](#) >> [2017] NZEmpC 57

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

---

## McPherson v Carter Holt Harvey Limited [2017] NZEmpC 57 (16 May 2017)

Last Updated: 19 May 2017

### IN THE EMPLOYMENT COURT AUCKLAND

#### [\[2017\] NZEmpC 57](#)

EMPC 68/2016

EMPC 167/2016

#### IN THE MATTER OF

a challenge to a determination of the  
Employment Relations Authority

#### AND IN THE MATTER

of proceedings removed from the  
Employment Relations Authority

#### AND IN THE MATTER

of an application by the defendant for leave to file an amended statement of defence to consolidated statement of claim and evidence

#### BETWEEN

STEPHEN MCPHERSON Plaintiff

AND

CARTER HOLT HARVEY LIMITED Defendant

Hearing: On the papers filed on 8 and 15 May  
2017

Appearances: L Yukich, advocate for plaintiff  
E Coats, counsel for defendant

Judgment: 16 May 2017

#### INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] The plaintiff's claims against the defendant have been consolidated and were set down for a hearing commencing on 23 May 2017 some time ago. The claims broadly relate to the extent to which the defendant complied with its obligations on termination of the plaintiff's employment, including any entitlement to holiday pay.

[2] The defendant seeks leave to file an amended statement of defence and a further brief of evidence for reasons set out in material before the Court. Because

the close-off date for pleadings has passed, leave is required. The plaintiff does not

oppose the application insofar as it relates to the additional witness brief. The plaintiff does oppose the application for leave to file an amended statement of defence.

[3] The parties were agreed that the application could be dealt with on the papers.

[4] The application is made pursuant to reg 6 of the [Employment Court Regulations 2000](#), drawing in the approach taken under the High Court Rules to applications for leave to file amended pleadings after the close-off date.<sup>1</sup>

[5] The Court has a broad discretion to grant leave. The reasons why the amendment is being sought, and the reasons for the delay, will be relevant. Any prejudice which the grant of leave will cause to the opposing party must be considered and weighed against any prejudice the applicant will suffer if leave is declined. Ultimately the application must be assessed having regard to the overall interests of justice. As the Court of Appeal has stated in *Shanton Apparel Ltd v*

*Thornton Hall Manufacturing Ltd*:<sup>2</sup>

The parties should have every opportunity to ensure that the real controversy goes to trial so as to secure the just determination of the proceeding.

[6] The prompt for the defendant's application has been this Court's judgment in the *Pulp and Paper Industry Council of the Manufacturing and Construction Workers Union v Oji Fibre Solutions (NZ) Ltd*.<sup>3</sup> It is apparent that, having considered Judge Perkins' judgment in that case, the defendant now accepts that it made an error in respect of the calculation of certain entitlements which the plaintiff claims. The expressed purpose of the proposed amendment is to clarify the defendant's position, thereby reducing the scope and nature of the issues for hearing.

[7] I understand the plaintiff's opposition to be focussed predominantly on the delay in taking such a step. As Mr Yukich, advocate for the plaintiff, points out, the

Employment Court judgment was delivered on 31 August 2016 (some eight and a

<sup>1</sup> [High Court Rules 2016](#), rr 7.7 and 7.77.

<sup>2</sup> *Shanton Apparel Ltd v Thornton Hall Manufacturing Ltd* [1989] NZCA 159; [1989] 3 NZLR 304 (CA) at 309.

<sup>3</sup> *Pulp and Paper Industry Council of the Manufacturing and Construction Workers Union v Oji Fibre Solutions (NZ) Ltd* [2016] NZEmpC 113.

half months ago). He says that it ought to have been clear to the defendant at an earlier stage that an amendment was warranted. The reasons for the delay, and the proposed change in pleadings stance, have been adequately explained in the material before the Court. While the judgment was delivered at the end of August, some time was then spent considering the impact of it on the present proceedings, communicating with non-parties, seeking advice, and obtaining confirmation from the Inland Revenue Department (which has not yet been given) as to how payments the defendant intends to make to Mr McPherson and others are to be dealt with for tax purposes.

[8] It is also said on behalf of the plaintiff that a judgment relied on by the defendant in support of its application for leave (*Rooney Earthmoving Ltd v McTeague & Ors*<sup>4</sup>) is distinguishable on the basis that leave was granted in that case to make a minor alteration to the pleadings, whereas the defendant is seeking to facilitate what is described as a "substantial change". I agree that the *Rooney* judgment is distinguishable on the facts, but I do not apprehend that that is the

reason why it is referred to by counsel for the defendant, Ms Coats. Rather, the judgment sets out the approach to be taken to applications of this sort.

[9] It is apparent that the proposed amendments will reduce, rather than expand, the extent of the issues for determination at the upcoming hearing. That is because the defendant is admitting allegations previously denied and is further particularising aspects of the defence. That means that there will be greater clarity as to what is in dispute, and what is not and why, at the hearing. As Ms Coats points out, all of this should have the effect of reducing the hearing time and expediting the passage of the case. If that can be achieved without prejudice to the plaintiff, that is a desirable outcome.

[10] No prejudice has been asserted by the plaintiff in relation to the proposed amendments, other than a complaint that they have come at a relatively late stage. While I accept that an earlier refinement of the statement of defence may have been desirable, any adverse impact on the plaintiff in terms of unnecessary preparation

can adequately be addressed by way of costs, as appropriate.

<sup>4</sup> *Rooney Earthmoving Ltd v McTeague & Ors* [2010] NZEmpC 55.

[11] I am satisfied that it is in the overall interests of justice that leave be granted to amend the statement of defence. The draft statement of defence filed with the application for leave will be treated as final.

[12] As I have said, the plaintiff is not opposed to the late filing of a brief of evidence of Mr O'Brien. In the circumstances, it is appropriate that leave be granted in respect of the brief of evidence.

[13] Costs are reserved.

Christina Inglis

Judge

Judgment signed at 4 pm on 16 May 2017

---

NZLII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#)

URL: <http://www.nzlii.org/nz/cases/NZEmpC/2017/57.html>