



# Employment Court of New Zealand

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## Milne v Air New Zealand Limited [2014] NZEmpC 39 (10 March 2014)

Last Updated: 14 March 2014

### IN THE EMPLOYMENT COURT AUCKLAND

#### [\[2014\] NZEmpC 39](#)

ARC 17/11

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

AND IN THE MATTER of an application for leave to extend time for filing

BETWEEN KATHLEEN ANN BEATTIE MILNE Plaintiff

AND AIR NEW ZEALAND LIMITED Defendant

**ARC 51/12**

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

AND IN THE MATTER of an application for leave to extend time for filing

BETWEEN KATHLEEN ANN BEATTIE MILNE Plaintiff

AND AIR NEW ZEALAND LIMITED Defendant

Hearing: Appearances:

by documents filed on 3, 5 and 6 March 2014

K Milne in person

D France, counsel for defendant

Judgment: 10 March 2014

### INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

KATHLEEN ANN BEATTIE MILNE v AIR NEW ZEALAND LIMITED NZEmpC AUCKLAND [\[2014\] NZEmpC 39](#) [10 March 2014]

[1] The plaintiff has sought an extension of time for filing notices of opposition to the defendant's applications to strike out two statements of claim (in ARC 17/11 and ARC 51/12). The application follows timetabling orders that were made (by agreement) during the course of a telephone conference on 10 December 2013. Those orders provided that if security for costs was not paid into Court on or before

10 February 2014 the defendant would file applications to strike out the proceedings in ARC 17/11 and ARC 51/12; the plaintiff would have until 3 March 2014 to file any notices of opposition; and both parties would have until 17 March 2014 to file written submissions.

[2] On 3 March 2014 (the date by which any notices of opposition were to be filed) the plaintiff sought an extension of time.

The basis for the application is set out in Ms Milne's memorandum. She says that the timeframe for response is too tight having regard to the fact that although she lives in Australia, her address for service is in Auckland and it takes some time for mail to reach her. I pause to note that these issues were canvassed during the course of the telephone conference on 10

December 2013 and that is why relatively generous periods of time for filing documentation were allowed for. I also note that the plaintiff was agreeable to the timeframes that were discussed and subsequently ordered. In these circumstances it is regrettable that an application for an extension of time has been advanced, particularly at the 11th hour.

[3] While the defendant is not opposed to some latitude being extended to the plaintiff, the defendant is opposed to the timeframe proposed by Ms Milne – namely

21 days in addition to the 14 day period specified in the Court's minute of 10

December 2013.

[4] Shortly after Ms Milne's application for an extension was filed, she emailed the Registry advising that she now wishes to make payments towards the order for security for costs (apparently in ARC 51/12). That email has been drawn to my attention. It does not appear that Ms Milne has copied that correspondence to counsel for the defendant, as she ought to have done. If the plaintiff now wishes to apply for a variation of the orders for security that have been made, an application will need to be advanced, together with any supporting material.

[5] Ms Milne was well aware of the timetable that had been set for the filing and service of documents. I do not consider that the reasons why an extension is required, or why 35 days is considered necessary, have been adequately explained. As Mr France notes, it is apparent that Ms Milne both sends and receives documentation by email and it is clear that the notices of application were sent to her via this means, as well as in hard copy.

[6] However, having regard to the particular circumstances I am prepared to vary the timetabling orders contained in my earlier minute of 10 December 2013 as

follows:

The plaintiff must file and serve any notices of opposition to the defendant's

applications to strike out no later than 5 pm on 24 March 2014;

The plaintiff must file and serve any application that she wishes to pursue to vary the orders for security for costs in either or both proceedings, together

with any supporting material, no later than 5 pm on 24 March 2014;

The defendant must file and serve any opposition to any application to vary

by 5 pm 28 March 2014;

The parties must file and serve any written submissions by 5 pm on 17 April

2014;

A telephone conference will then be scheduled by the Registrar, in consultation with the parties, to enable the parties to be heard in person on the

applications (in accordance with Ms Milne's earlier request).

[7] The parties should be aware that it is most unlikely, absent good reason, that any further extensions of time will be forthcoming. As I have previously observed, it

is necessary for these proceedings to be progressed without unnecessary ongoing delay.

[8] Finally, the plaintiff is reminded of her obligation to copy counsel for the defendant in to communications with the Court.

[9] Costs are reserved.

Christina Inglis  
Judge

Judgment signed at 3.45 pm on Monday 10 March 2014

