



Employment Court of New Zealand

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Neil v New Zealand Nurses Organisation [2021] NZEmpC 21 (8 March 2021)

Last Updated: 14 March 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2021\] NZEmpC 21](#)

EMPC 191/2020

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for stay of proceedings
BETWEEN	ANGELA NEIL First Plaintiff
AND	TINA WEST Second Plaintiff
AND	NEW ZEALAND NURSES ORGANISATION Defendant

Hearing: On the papers

Appearances: A Halse, advocate for plaintiffs
S Hornsby-Geluk and C Luscombe, counsel for defendant

Judgment: 8 March 2021

INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE KATHRYN BECK

(Application for stay of proceedings)

[1] This is an application to stay these proceedings pending the outcome of a judicial review, filed in the Court of Appeal, of the decision of this Court to strike out parts of the plaintiffs' second amended statement of claim (filed on 15 September 2020).¹

[2] The application is not opposed by the defendant.

¹ *Neil v New Zealand Nurses Organisation* [\[2020\] NZEmpC 238](#).

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[3] Despite there being no opposition by the defendant, it is necessary to consider the merits of the application. It is important that proceedings be dealt with and not unnecessarily delayed. These particular proceedings have been on foot for some time (employment ended in February 2019) and it is not in the broader interests of justice that they be prolonged further without good reason.

[4] In considering an application of this sort, the Court is ultimately guided by the interests of justice. The factors generally considered relevant are well established.² They include:

(a) If no stay is granted, whether the right to appeal will be rendered ineffectual;

- (b) whether the defendant will be affected injuriously by a stay;
- (c) whether the appeal is being pursued in good faith; and
- (d) the novelty and importance of the questions involved in the case.

[5] I deal with each of these factors in turn.

[6] The paragraphs that have been directed to be struck out of the statement of claim are limited. In principle, preparation for, if not a hearing of, the proceeding could continue without rendering the appeal ineffectual. However, I agree that given the nature of the content of the paragraphs, which directly relate to the admissibility of evidence that can be presented at the hearing, if no stay is granted and the hearing proceeds, it will render the appeal ineffectual.

[7] The defendant does not oppose this application and so it appears that it does not consider it will be affected injuriously.

2. *New Zealand Post Primary Teachers' Assoc v Attorney-General (on behalf of Ministry of Education) (No 3)* [1991] NZEmpC 89; [1991] 3 ERNZ 708 (EmpC) at 709. See also *Z v Attorney-General* EmpC Wellington WRC 33/02, 22 July 2003 at [9].

[8] There is no evidence before the Court that suggests the appeal is not being pursued in good faith.

[9] There are no novel or important issues of law apparent at this stage of the proceeding. However, that is not fatal to an application such as this.

[10] The plaintiffs seek a stay so that both parties do not incur unnecessary costs. That is not necessarily a factor in determining whether a stay is appropriate. However, it is preferable that the parties have certainty in relation to the pleadings when preparing for a hearing. This enables them to properly focus on the matters at issue before the Court. It will also inevitably assist them to not incur unnecessary cost on matters that may not be relevant.

[11] Given that there is no injurious effect on the defendant (as evidenced by the lack of opposition) and the fact that the appeal would be rendered ineffectual if a hearing was to proceed, I consider the overall balance of convenience leads to the conclusion that the application for a stay should be granted.

[12] The application for a stay is accordingly granted.

[13] Costs are reserved.

Kathryn Beck Judge

Judgment signed at 2.30 pm on 8 March 2021