



Employment Court of New Zealand

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Opai v Commissioner of Police [2024] NZEmpC 75 (13 May 2024)

Last Updated: 16 May 2024

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURĀU

[\[2024\] NZEmpC 75](#)

EMPC 116/2024

IN THE MATTER OF an application for leave to extend time
 to file a challenge to a determination
 of the Employment Relations
 Authority
BETWEEN MELISSA OPAI
 Plaintiff
AND THE COMMISSIONER OF POLICE
 Defendant

Hearing: On the papers
Appearances: Plaintiff in person
 H Kynaston, L E S G Robertson and N Cuervo, counsel
 for defendant
Judgment: 13 May 2024

JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

[1] The plaintiff has filed an application for leave to extend the time for filing a challenge to a determination of the Employment Relations Authority dated 20 October 2023, which I refer to as the Authority's third determination.¹ While Ms Opai originally sought to challenge aspects of that determination via an amended statement of claim, the amended claim was rejected for filing on the basis that a fresh statement of claim was required. Because the statutory timeframe for filing a challenge had, by that time, elapsed, leave is required. This judgment deals with that issue.²

1 *Opai v Commissioner of Police* [\[2023\] NZERA 618 \(Member Larmer\)](#).

2 See [Employment Relations Act 2000, s 179\(2\)](#).

MELISSA OPAI v THE COMMISSIONER OF POLICE [\[2024\] NZEmpC 75](#) [13 May 2024]

[2] From the outset the defendant advised that it did not oppose the application for leave subject to two caveats. The first was confirmation that Ms Opai had, as she said, sought to file amended pleadings within the statutory timeframe for filing a challenge and second that the proposed challenge was directed only at matters contained within the Authority's third determination.

[3] The first caveat was addressed in the Court's minute of 13 February 2024 and can be put to one side. I accept that Ms Opai sought to file within time. As to the second matter, Ms Opai has filed a draft statement of claim with the application. As counsel for the defendant observe, the draft statement of claim contains material which relates to defamation proceedings in the High Court and matters referred to in another determination of the Authority (the second determination).³ This Court has no jurisdiction in respect of the High Court proceedings and nor is the Authority's second determination subject to challenge. The draft statement of claim confirms that it is directed at the third determination only and I infer that the material relating to other matters is included for background context only. I proceed on that basis.

[4] The Court has a discretion to grant an extension of time to take various steps, including to file a challenge.⁴ The

discretion is to be exercised in accordance with principle. The overarching consideration is the interests of justice. The usual factors that will be considered are:5 the reasons for the omission to file within time; the length of the delay; any prejudice or hardship to any other person; the effect on the rights and liabilities of the parties; and subsequent events.

[5] As I have said, the plaintiff took steps to file within time but sought to do so via the wrong procedural route. I accept that the plaintiff would be unduly prejudiced if leave was declined – she would be prevented from challenging adverse findings of the Authority which she would otherwise be entitled to pursue. In light of my earlier observations about the scope of the draft statement of claim, there is no identifiable prejudice to the defendant, and it is in the broader interests of justice that leave be granted.

3 *Opai v Commissioner of Police* [\[2020\] NZERA 147](#).

4 [Employment Relations Act 2000, s 219](#).

5 *Stevenson v Hato Paora College Trust Board* [\[2002\] NZEmpC 39](#); [\[2002\] 2 ERNZ 103 \(EmpC\)](#) at [\[8\]](#).

[6] The application for leave is accordingly granted.

[7] A statement of claim in the form of the draft filed with the application is to be filed and served within seven days. The defendant will have 14 days to file and serve any statement of defence to it.

[8] Costs are reserved.

Christina Inglis Chief Judge

Judgment signed at 11.30 am on 13 May 2024

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