



Employment Court of New Zealand

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Pilgrim v Attorney-General [2023] NZEmpC 26 (25 February 2023)

Last Updated: 6 March 2023

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI

[\[2023\] NZEmpC 26](#)
EMPC 85/2022

IN THE MATTER OF	a declaration under s 6(5) of the Employment Relations Act 2000
AND IN THE MATTER OF	an application for leave to recall a witness
BETWEEN	SERENITY PILGRIM, ANNA COURAGE, ROSE STANDTRUE, CYSTAL LOYAL, PEARL VALOR AND VIRGINIA COURAGE Plaintiffs
AND	THE ATTORNEY-GENERAL SUED ON BEHALF OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT, LABOUR INSPECTORATE First Defendant
AND	HOWARD TEMPLE, SAMUEL VALOR, FAITHFUL PILGRIM, NOAH HOPEFUL AND STEPHEN STANDFAST Second Defendants

Hearing: On the papers
Appearances: BP Henry, D Gates and S Patterson, counsel for plaintiffs
J Catran, K Sagaga and A Piaggi, counsel for first defendant
S Valor, S Standfast and P Righteous, representatives for second defendants
R Kirkness, counsel to assist the Court
Judgment: 25 February 2023

SERENITY PILGRIM, ANNA COURAGE, ROSE STANDTRUE, CYSTAL LOYAL, PEARL VALOR AND VIRGINIA COURAGE v THE ATTORNEY-GENERAL SUED ON BEHALF OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT, LABOUR INSPECTORATE [\[2023\] NZEmpC 26](#) [25

February 2023]

INTERLOCUTORY JUDGMENT (NO 29) OF CHIEF JUDGE CHRISTINA INGLIS

(Application for leave to recall a witness)

[1] The first defendant has applied for leave to cross-examine a witness (Mrs Benjamin) for the Gloriavale defendants, who gave evidence on 23 February 2023. I treat the application as an application for recall. The plaintiffs do not oppose the application. The Gloriavale defendants have filed a memorandum at short notice. They have raised issues in respect of the reasons why the application has been advanced, but are otherwise prepared to abide the decision of the Court.

[2] The Court may order the recall of a witness who has already given evidence where it is in the interests of justice to do so.¹

[3] The decision is necessarily a pragmatic one, dependent on the circumstances of the particular case.² The importance of the evidence is a relevant factor.³ Also relevant is whether it emerged in a way that was not anticipated and the significance of the potential lines of cross-examination.⁴ Against this the Court should take into account the general impact of requiring a witness to be recalled, such as delay to the proceedings.⁵

[4] I accept that counsel may not have been expecting the evidence to be given. It emerged in answer to a question put to the witness in evidence in chief. However, I agree with Mr Valor, for the Gloriavale defendants, that it is unclear why cross-examination on the evidence could not have proceeded at the time. Briefs of evidence for all witnesses were filed some considerable time ago, including for the witness (who has yet to give evidence) whose evidence is said to be inconsistent with Mrs Benjamin's.

1 See, by way of useful analogy in this Court, [Evidence Act 2006, s 99](#).

2 *Woodhouse v New Zealand Police* HC Rotorua CRI-2010-463-71, 13 April 2011 at [42].

3 *R v T* HC Christchurch CRI-2007-009-6270, 9 April 2008.

4 *Stevens v R* [2020] NZHC 3290 at [45].

5 *Young v Tower Insurance Ltd* [2016] NZHC 2176 at [13].

[5] There has been minimal delay in the application being advanced; the scope of the intended cross-examination is narrow; recall of the witness can be accommodated on Monday 27 February 2023; and inconvenience to the witness can be minimised by her giving evidence via AVL.

[6] In the circumstances, I am prepared to grant the application. Mrs Benjamin is to be recalled for the purposes of cross-examination on the limited basis set out in counsel for the Attorney-General's application. She will give her evidence via AVL on Monday 27 February 2023 at 9.30 am.

[7] Costs are reserved.

Christina Inglis Chief Judge

Judgment signed at 10.30 am on 25 February 2023

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