



Employment Court of New Zealand

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Radius Residential Care Limited v Hammond [2014] NZEmpC 57 (16 April 2014)

Last Updated: 2 May 2014

IN THE EMPLOYMENT COURT AUCKLAND REGISTRY

[\[2014\] NZEmpC 57](#)

ARC 24/14

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

AND stay of execution and urgency

BETWEEN RADIUS RESIDENTIAL CARE LIMITED

Plaintiff

AND SEIONALA HAMMOND Defendant

Hearing: Following a telephone conference held at 2.15pm on 16 April

2014

Appearances: P Kiely and S Worthy, counsel for plaintiff

W Reid, advocate for defendant

Judgment: 16 April 2014

INTERLOCUTORY JUDGMENT OF M E PERKINS

[1] These proceedings involve a challenge to a determination of the Employment Relations Authority dated 7 April 2014.¹ In addition to filing the documents necessary to commence the challenge in the Court the plaintiff has filed an application for stay of proceedings and that urgency be granted. The application is accompanied by an affidavit from the Human Resources Manager for the plaintiff and an undertaking as to damages.

[2] The effect of the termination was that the plaintiff is required to reinstate the defendant to her position with the plaintiff with immediate effect, time being of the

essence. In addition the defendant was awarded lost wages of \$10,000 and

¹ [2014] NZERA Auckland 132.

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compensation of \$4,000. Costs were reserved and a further determination of the

Authority on costs is pending.

[3] The plaintiff, in its application for stay, is prepared to agree to conditions whereby it would pay the wages and compensation of \$14,000 into Court to be held in an interest bearing account and to pay the defendant her normal salary

pending a further order of the Court. Insofar as costs are concerned, the plaintiff is prepared also to pay into Court whatever costs are awarded in the respondent's favour by the Authority. These conditions of course are in turn conditional upon the respondent, in the meantime, remaining away from the workplace.

[4] As it was clear that some urgency in dealing with this matter on an interim basis was necessary, I gave directions as to filing documents in response by the respondent and also directed that a telephone hearing with counsel take place. That telephone hearing took place at 2.15pm on 16 April 2014.

[5] At the hearing, Mr Reid indicated on behalf of the respondent that she is prepared to consent to a stay of execution of the determinations until the Court has heard and decided the challenge. Mr Kiely indicated his agreement with the proposal as to a stay with conditions put forward by Mr Reid, but indicated that in view of the pending Easter break, it would be preferable if the plaintiff could be given 14 days in which to make payment into Court.

[6] Accordingly, by consent, the following orders are made:

a) There is a stay of execution or enforcement of the determination of the Employment Relations Authority dated 7 April 2014, until further order of the Court;

b) Such stay is on the condition that:

i) The plaintiff pay to the Registrar of the Employment Court at Auckland on or before 4pm on 30 April 2014, the sum of \$14,000. That sum is to be held in an interest bearing account until further order of a Judge;

ii) The plaintiff is to pay the defendant her normal salary pending further order of a Judge.

iii) The plaintiff is to pay to the Registrar of the Employment Court at Auckland, any sum subsequently awarded by the Employment Relations Authority in favour of the defendant as to costs. Such sum is to be paid to the Court within 14 days of the date of such determination on costs and is to be held on the same conditions as (i) above.

iv) Pending further order of a Judge, the defendant is to remain away from the worksite at Matua, Tauranga.

[7] The plaintiff is to pursue this challenge diligently and expeditiously. Once the respondent has filed a statement of defence in these proceedings the Registrar will allocate a telephone directions conference date so that the matter may be progressed.

[8] Leave is reserved to either party to apply for further orders or directions. [9] Costs in respect of the present application are reserved.

M E Perkins

Judge

Judgment signed at 4.45 pm on 16 April 2014