



# Employment Court of New Zealand

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## Smartlift Systems Limited v Armstrong [2021] NZEmpC 66 (7 May 2021)

Last Updated: 12 May 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURĀU

[\[2021\] NZEmpC 65](#)

EMPC 1/2021

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for evidence to be heard by audio visual link
BETWEEN	SHAH ENTERPRISE NZ LIMITED First Plaintiff
AND	SAPAN JAGDISHBHAI SHAH Second Plaintiff
AND	A LABOUR INSPECTOR OF MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Defendant

Hearing: On the papers

Appearances: L Meys, counsel for plaintiffs  
G La Hood, counsel for  
defendant

Judgment: 6 May 2021

INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN

**(Application for evidence to be heard by audio visual link)**

[1] The plaintiffs challenge a determination of the Employment Relations Authority (the Authority) which found the first plaintiff, Shah Enterprise NZ Ltd breached minimum code legislation and employment standards in respect of one of its

SHAH ENTERPRISE NZ LIMITED v A LABOUR INSPECTOR OF MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT [\[2021\] NZEmpC 65](#) [6 May 2021]

former employees. The second plaintiff, Mr Shah, was found to be a person involved in the breach of the minimum code legislation.<sup>1</sup>

[2] The Labour Inspector has applied for an order allowing one of its witnesses to give evidence remotely by audio visual link (AVL), pursuant to the [Courts \(Remote Participation\) Act 2010](#).

[3] The application is in respect of Mr Hardik Maradiya, the former employee of the first plaintiff who is the subject of the claimed breaches of the minimum standards legislation. Mr Maradiya is an Indian national who currently will be required to return to India when his visa expires in June 2021. At this stage, if Mr Maradiya is required to return to India, it is unlikely that he would be able to gain entry permission into New Zealand for the hearing.

[4] The plaintiffs do not oppose this application.

[5] [Section 5](#) of the [Courts \(Remote Participation\) Act](#) provides criteria to apply when such an application is made. That criteria includes the nature of the proceeding, the availability and quality of the technology that would be used, the potential impact of the use of the technology on the effective maintenance of the rights of other parties to the proceeding, including the ability to assess the credibility of witnesses and the reliability of the evidence presented to the Court; and the level of contact with other participants.

[6] On a number of occasions, similar difficulties with travel to attend hearings have given rise to the Court granting leave to participate via AVL.<sup>2</sup>

[7] I am satisfied that, applying the criteria in [s 5](#), the grounds for the application have been made out by the Labour Inspector and it is appropriate for his witness's evidence to be given by AVL, if necessary.

1. *Labour Inspector of the Ministry of Business Innovation and Employment v Shah Enterprise NZ Ltd* [\[2020\] NZERA 505 \(Member Fitzgibbon\)](#).
2. *Concrete Structures (NZ) Ltd v Ward* [\[2020\] NZEmpC 128](#); *Ceres New Zealand LLC v DJK* [\[2020\] NZEmpC 105](#); and *AlKazaz v Enterprise IT Ltd (No 2)* [\[2020\] NZEmpC 78](#).

[8] Accordingly, the application is granted subject to:

- (a) the Labour Inspector complying with the conditions set out in the [Guideline for Appearing by Audio Visual Link](#).<sup>3</sup>
- (b) the Labour Inspector supplying Mr Maradiya with a copy of the [Summary of Guidelines for a Witness Giving Evidence by Audio Visual Link](#) and advising the registry once this has been done.<sup>4</sup>

[9] The Registrar is now to set this matter down for a three day hearing in Tauranga, in consultation with the parties, with further directions provided in the Court's minute that accompanies this judgment.

[10] Costs are reserved.

J C Holden Judge

Judgment signed at 2.30 pm on 6 May 2021

3. "Guideline for Appearing by Audio Visual Link" < <https://employmentcourt.govt.nz/what-to-expect/before-a-hearing/#AVL> >.

4 "Summary of Guidelines for a Witness Giving Evidence by Audio Visual Link"

< <https://employmentcourt.govt.nz/what-to-expect/during-a-hearing/#evidence> >.