

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 2
5577914

BETWEEN DR SIMON SPACEY
Applicant

AND VICE CHANCELLOR
UNIVERSITY OF WAIKATO
Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in Person
David France for Respondent

Investigation Meeting: On the papers

Determination: 5 January 2016

**DETERMINATION OF THE AUTHORITY ON APPLICATION FOR STAY
OF PROCEEDINGS**

- A. The application for stay of proceedings is granted until such time as the Employment Court has decided Dr Spacey's challenge to the Authority's determination [2015] NZERA 348.**
- B. Costs are reserved.**

Employment relationship problem

[1] On 10 November 2015 I issued a determination declining Dr Spacey's application that I recuse myself from determining his proceedings lodged in the Authority on 12 August 2015¹.

[2] On 1 December 2015 Dr Spacey filed an application in the Employment Court challenging my determination on a de novo basis.²

¹ *Spacey v Vice Chancellor University of Waikato* [2015] NZERA Auckland 348

² EmpC 365/2015.

[3] Dr Spacey has now applied to the Authority for a stay of the current proceedings on the grounds that he has challenged my determination declining to recuse myself and his challenge is yet to be determined by the Employment Court.

[4] The application for stay of proceedings is not opposed by the Vice Chancellor University of Waikato (Waikato University).

[5] By the consent of the parties, this application has been dealt with on the papers currently before the Authority.

Issues

[6] The issue for determination is whether the application for stay of proceedings should be granted.

Determination

[7] In *Assured Financial Peace Ltd v Pais*³ the Employment Court set out seven considerations which may apply, to a greater or lesser extent, in exercising discretion in relation to a stay application as being⁴:

- a) If no stay is granted, whether the applicants right of appeal will be rendered ineffectual;
- b) Whether the appeal is brought and prosecuted for good reasons, in good faith;
- c) Whether the successful party at first instance will be affected injuriously by a stay;
- d) The effect on third parties;
- e) The novelty and importance of the question involved in the case;
- f) The public interest in the proceedings; and

³ [2010] NZEmpC 50.

⁴ Ibid at [5].

g) The overall balance of convenience.

[8] If a stay of proceedings is not granted and I continue to determine the proceedings currently before the Authority prior to the applicant's challenge being heard and determined by the Court, the applicant's challenge will be rendered nugatory. I am satisfied that the University of Waikato would not be affected injuriously if a stay is granted.

[9] The overall balance of convenience lies in granting the application for stay until the Employment Court has had the opportunity of hearing and determining Dr Spacey's challenge to my earlier determination.

Costs

[10] Costs are reserved.

Vicki Campbell

Member of the Employment Relations Authority