



Employment Court of New Zealand

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Talbot Agriculture Limited v Wate [2018] NZEmpC 62 (1 June 2018)

Last Updated: 8 June 2018

IN THE EMPLOYMENT COURT
CHRISTCHURCH

[\[2018\] NZEmpC 62](#)
EMPC 337/2017

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER	of an application for an adjournment
BETWEEN	TALBOT AGRICULTURE LIMITED Plaintiff
AND	FRANKLYN WATE Defendant

Hearing: Hearing by telephone on 28 and 31 May 2018

Appearances: D Caldwell, counsel for plaintiff J Horan, advocate for defendant

Judgment: 1 June 2018

INTERLOCUTORY JUDGMENT (NO 3) OF JUDGE K G SMITH APPLICATION FOR ADJOURNMENT

[1] The trial of this proceeding is set down for 9 and 10 July 2018.

[2] On 24 May 2018, the plaintiff sought an adjournment, because of the recent adjustment to the directions timetable granting an application by the defendant to extend the time for him to file evidence. The revised timetable required his evidence to be filed and served no later than 4.00 pm on 29 May 2018. The timetable was also revised to accommodate an opportunity for the plaintiff to file evidence in reply, if it wished to do so, no later than 4.00 pm on 8 June 2018.1

1 *Talbot Agriculture Ltd v Wate (No 2)* [\[2018\] NZEmpC 49](#).

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[3] The grounds of this application were supplied in an affidavit by the plaintiff's Managing Director, Jeremy Talbot, who is likely to be its primary witness. His concern is that this revised timetable may compromise the plaintiff's ability to file briefs of evidence in reply by 8 June 2018. That difficulty was said to be caused by a combination of circumstances, involving Mr Talbot's other commitments, compounded by the delay caused by the defendant in not complying with the original timetable.

[4] Between now and 8 June 2018, Mr Talbot has other commitments which are all business-related. On 31 May 2018, he is required to inspect and unload a container at the port of Timaru. He deposed to being the only person qualified to undertake this inspection and that it would take all day. If there are any shipping delays unloading will not take place until either Monday 4 or Tuesday 5 June 2018. He did not say what was being unloaded, or explain why the contents of the container means he is the only person who could attend to this task. Between now and 8 June he and his fellow directors are to redrill a crop of wheat, which work was made necessary because of recent heavy rain and the previous use of poor-quality seed. He plans to attend the New Zealand Federated Farmers conference in Timaru on 6 June but has an unspecified commitment relating to it on 5 June. Finally, he will be overseas, in the United Kingdom, from 8 June returning to New Zealand on 3 July 2018. This overseas trip is an annual one to secure and maintain contracts for importing and selling

specialised agricultural contracting machinery, but he did not say what was significant about the dates of his anticipated travel.

[5] Mr Caldwell, counsel for the plaintiff, submitted that evidence in reply to what has been said by, and for, the defendant is necessary and the grounds relied on by the plaintiff support granting an adjournment. He also referred to the intervention of Queen's Birthday weekend which will also reduce what the plaintiff considers to be an already compressed timetable.

[6] Mr Horan, advocate for the defendant, did not oppose the application.

Conclusion

[7] The defendant's decision to not oppose the application is not determinative. The issue is whether the interests of justice will be served by granting the application in circumstances as disclosed to the Court.

[8] I accept that the time allowed for the plaintiff to file evidence in reply is short, and that Mr Talbot's commitments may result in it being placed under pressure. However, the interests of justice do not require an adjournment because of that pressure. Mr Talbot's commitments can be accommodated by amending the direction provided in my minutes of 16 and 20 March 2018. That direction was for evidence in reply to be given orally at the hearing with a brief of evidence being filed in advance only where the defendant may be taken by surprise. Amending that direction so that Mr Talbot's evidence in reply is now to be given orally at the hearing, without filing a brief in advance, will address the pressure he has raised. A disadvantage to the defendant in taking this step is unlikely and, if it materialises that he is surprised by anything said in evidence in reply by Mr Talbot, steps can be taken at the trial to provide him with a proper opportunity to respond.

Outcome

[9] The plaintiff's application is dismissed.

[10] The timetable is amended so that the plaintiff is not required to file a brief of evidence in reply by Mr Jeremy Talbot. He may give that evidence orally at trial. The timetable remains unaltered in all other respects.

[11] Costs are reserved.

Judgment signed at 10:35 am on 1 June 2018

K G Smith Judge

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