

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2024] NZEmpC 79  
EMPC 36/2024**

IN THE MATTER OF      an application for leave to extend the time to  
file a challenge to a determination of the  
Employment Relations Authority

BETWEEN                SPRING 2017 LIMITED  
Applicant

AND                        TEPORA TAIFAU  
Respondent

Hearing:                On the papers

Appearances:        M Meyrick, advocate for applicant  
S Greening and K Hudson, counsel for respondent

Judgment:            15 May 2024

---

**JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS**

---

**Introduction**

[1] Spring 2017 Ltd (the company) seeks leave to extend time to file a challenge to a determination of the Employment Relations Authority (the Authority).<sup>1</sup> Leave is required because the challenge was not filed within the statutory time period for doing so.<sup>2</sup>

---

<sup>1</sup> *Taifau v Spring 2017 Ltd* [2023] NZERA 396 (Member Larmer).

<sup>2</sup> Employment Relations Act 2000, s 179(2).

[2] The respondent opposes the application for leave to extend time. Both parties have filed affidavits and submissions, and agreed that the application could be dealt with on the papers.<sup>3</sup>

### **Framework for analysis**

[3] The Court has a discretion to grant an extension of time to file a challenge arising under s 219 of the Employment Relations Act 2000 (the Act). The relevant factors include:<sup>4</sup>

- (a) The length of the delay.
- (b) The reasons for the delay.
- (c) The conduct of the parties, and particularly the applicant.
- (d) Any prejudice or hardship to the respondent or other affected parties.
- (e) The significance of the issues raised by the challenge, including to the parties and the general public.

[4] Insofar as an application to extend time to file a challenge is concerned, the Court has previously had regard to the merits of the proposed challenge. This factor is now approached with caution, for reasons which I will come to.

#### *Length of delay*

[5] The delay in filing was significant. The Authority's determination was issued on 26 July 2023. That means that the last day to file a challenge was 23 August 2023. The application for leave to extend time to file the challenge was filed on 5 February 2024, so a delay of over five months.

---

<sup>3</sup> *Spring 2017 Ltd v Taifau* [2024] NZEmpC 33, at [3].

<sup>4</sup> *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801.

### *Reasons for delay*

[6] An affidavit sworn by Mr Miki was filed in support of the application. Mr Miki describes himself as being associated with the director of the company, and says that he assists in running the company's business (a bakery). He says that the company's representative prepared a statement of claim within time and sent it to the company with instructions on how to go about filing it in the Employment Court. The company gave the documents to Mr Miki to file. Mr Miki says that he was not familiar with Court processes and filed the documents in the Manukau District Court in error; that the clerk at that Court date stamped the statement of claim and accepted it for filing; and that he and the company heard nothing further, believing that the challenge had been successfully filed in the correct place.

[7] It was not until enforcement action was taken by the respondent in respect of the failure by the company to comply with the Authority's orders against it that the company realised that the documentation had not been correctly filed and immediate steps were taken to remedy the situation and proceed in the Employment Court.

[8] There are numerous cases where leave has been granted in circumstances where there has been a miscalculation of time and a short delay in filing.<sup>5</sup> I agree with counsel for the respondent that this case does not fall within that sort of category.

[9] A party seeking an extension of time for filing a challenge must satisfy the Court that there is a sound basis for doing so. That involves explaining the reasons for any delay, including by way of supporting evidence. No documents (such as the date stamped statement of claim said to have been accepted for filing by the District Court or the letter setting out the instructions for filing) were annexed to the affidavit. There is no suggestion that the company took steps to serve Ms Taifau with the statement of claim it says was filed in the District Court in August 2023. And her evidence is that she only became aware of the proceedings in February 2024, so several months later and after the bailiff appears to have visited the company's premises to uplift property in January 2024.

---

<sup>5</sup> See *Almond*, above n 4, at [37].

[10] Nor has it been explained why the company took no steps to follow up with the Court in respect of its challenge in the several months following filing. Rather it was a visit from the bailiff which appears to have prompted engagement with the Court, by filing an application for a stay and for leave to extend time.

[11] The reasons for the delay are inadequately explained. This weighs against the grant of leave.

*Applicant's conduct*

[12] The grant of leave after a significant period of delay is an indulgence. The applicant's conduct, as outlined above, does not assist its application. More generally, the company continues to fail to satisfy the awards made against it by the Authority despite the Court declining its application for a stay.<sup>6</sup> There have also been delays in the applicant progressing this application, namely by late compliance with timetabling directions.

*Prejudice?*

[13] The applicant says that Ms Taifau will face no more prejudice than she would have faced if the challenge had been filed on time. That overlooks the impact of the substantial delay in the intervening period, punctuated by attempts she has made to enforce the Authority's orders and believing that the company was not seeking to challenge the Authority's determination. Ms Taifau describes the stress she has been under as a result of the most recent developments and her concerns about facing further delays and Court proceedings. I accept that Ms Taifau will be prejudiced if the application is granted.

[14] I do not overlook the fact that if leave is declined, the applicant will not be able to challenge a determination made against it.

---

<sup>6</sup> *Taifau*, above n 3, at [12].

*Significance of issues on proposed challenge?*

[15] While the proposed challenge raises issues of importance to the parties it does not engage any broader public interest. This factor can be put to one side.

*Merits*

[16] The Supreme Court has made it clear that there is difficulty in assessing the merits of an application at an early stage, and the exercise should be approached with caution.<sup>7</sup>

[17] The applicant wishes to pursue a de novo challenge. The challenge would largely involve contested issues of fact, including as to the circumstances leading to the dismissal. While the respondent asserts that the merits are weak, it is too early to say with confidence where the merits are likely to lie. What can, however, be said is that there is nothing on the material currently before the Court to suggest that the merits are so strong as to outweigh the other factors which point away from leave being granted.

**Conclusion**

[18] The application for leave to extend time is declined. The respondent is entitled to costs.

[19] The respondent is legally aided.<sup>8</sup> If any issue of costs arises I will receive memoranda.

Christina Inglis  
Chief Judge

Judgment signed at 4.30 pm on 15 May 2024

---

<sup>7</sup> See *Almond*, above n 4, at [39(c)].

<sup>8</sup> *Taufau*, above n 3, at [15].