

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2010] NZEMPC 124
ARC 68/10**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF an application for stay

BETWEEN NEW ZEALAND LANGUAGE
CENTRES LIMITED (FORMERLY
GEOS NEW ZEALAND LIMITED)
Plaintiff

AND DAVID PAGE
Defendant

Hearing: 14 September 2010
(Heard at Auckland)

Appearances: Dean Kilpatrick, counsel for plaintiff
Richard Harrison, counsel for defendant

Judgment: 14 September 2010

ORAL INTERLOCUTORY JUDGMENT OF JUDGE B S TRAVIS

[1] This is an opposed application for a stay of the enforcement of a determination by the Employment Relations Authority. The awards made by the Authority exceed \$170,000 in total and a stay is being sought but without the plaintiff being able to provide payment into Court of anything approaching that sum.

[2] Due to its present trading situation the plaintiff asserts that the most it can afford is \$20,000 to be paid into an interest bearing account in the Court and held pending further order, as a condition of the grant of the stay it seeks. It is, at present, under threat of a demand from the defendant which may move into winding up proceedings if not satisfied. There is some material before me which supports the plaintiff's concerns about its ability to continue to trade if it is required to pay the

full amount into Court but that material is not supported by adequate financial information or deposed to on oath.

[3] The plaintiff has been prepared for some time to pay directly to the defendant what it considers it may owe in relation to holiday pay on the figures present available to it. That is the sum of \$5,303.48. The financial figures of the predecessor of the plaintiff company are apparently held by the receivers of the parent company in Australia and have not been made available to the plaintiff in New Zealand in spite of requests. That material is clearly crucial for the proper disposition of the challenge and may need to be the subject of direct orders to ensure that the receivers do provide that material.

[4] In the meantime however, the plaintiff is prepared to pay that sum on the understanding that it is not in full and final settlement but on account of what may be the outstanding holiday pay, such final sum to be ascertained when the salary figures are available. On the basis of that assurance and the assurance in relation to the \$20,000, I am prepared to grant an interim stay for a period of 28 days from today's date on the following conditions:

- a) The sum of \$5,303.48 is to be paid by the plaintiff into the defendant's bank account. The plaintiff is aware of that bank account having recently credited a substantial sum to it.
- b) The sum of \$20,000 is to be paid into Court within seven days of today's date to be held on an interest bearing account pending further order of the Court.
- c) Within the 28 day period the plaintiff provide to the defendant and to the Court, financial information to support the opinion contained in Mr Hansen's letter of 8 September, annexed to the second affidavit of Mr Mastoyo, affirmed on 24 August 2010. That will enable the Court to have before it material from which it can ascertain the current situation of the plaintiff both from a point of view of assets and liability, outstanding debtors, creditors, cash on hand and the ability

to continue trading. Such information would enable the Court to make an informed order as to what, if any, the extent of the conditions for a permanent stay ought to be. In that same period it is hoped that the receivers in Australia will provide to the plaintiff the material that the plaintiff needs to calculate with some certainty the outstanding salaries and benefits to which the defendant was entitled during his employment.

[5] In this regard Mr Harrison seeks on behalf of the defendant the direct payment to the defendant of the amount of the Australian superannuation which the Authority determined, in paragraph 89e of its determination dated 25 May 2010, to be in Australian dollars \$21,855.35.

[6] In its current pleading the plaintiff's statement of claim contains no express allegation in relation to the defendant's Australian superannuation entitlement which indicates whether the amount is either in dispute, or whether its payment has already been made. It merely contains, under the heading "Relief" in paragraph 28, an order that "the defendant has received all monies owed to him by way of remuneration and/or benefits under the terms of employment". That is not satisfactory. I require to be satisfied from the material to be filed by the plaintiff that there is a proper basis for disputing either liability for, or the quantum of, the Australian superannuation.

[7] If such material establishing a prima facie case on the part of the plaintiff is not provided then I will be directing that the amount of the award made by the Authority in relation to the Australian superannuation be paid directly to the defendant as a condition of any permanent stay. It would be of assistance to the Court if the information can be provided in the form of an affidavit.

[8] On these conditions the interim stay is granted and costs are reserved.

B S Travis
Judge

Oral interlocutory judgment delivered at 11.09am on 14 September 2010