

**IN THE EMPLOYMENT COURT
WELLINGTON**

**[2011] NZEmpC 98
WRC 8/09**

IN THE MATTER OF an application for adjournment

BETWEEN LYNNE FRANCES SNOWDON
 Plaintiff

AND RADIO NEW ZEALAND LIMITED
 Defendant

Hearing: By video conference held on 2 August 2011
 (Heard at Wellington and Auckland)

Counsel: Richard Fletcher, counsel for plaintiff
 Michael Quigg and Tim Sissons, counsel for defendant

Judgment: 2 August 2011

ORAL INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE B S TRAVIS

[1] First of all, I am deeply concerned at the way this litigation has been conducted by the plaintiff both during the time that I have been involved and as recorded in a variety of judgments of this Court by my predecessor. I have a concern as to when, if ever, these proceedings would be brought on if I adjourn the fraud proceedings as requested by the plaintiff.

[2] I am also very moved by the affidavit evidence before me from Radio New Zealand's witnesses as to their health, their difficulties with this set of proceedings and the effect it has on them. As might have been demonstrated by my judgments¹ to date, I was very anxious that at least we get the fraud proceedings on and out of the way and that would still be my most earnest desire.

[3] Balanced against this is the medical evidence that Ms Snowdon's health is deteriorating and is unlikely to permit her to be present at the trial and may not allow

¹ [2011] NZEmpC 94 and [2011] NZEmpC 96.

her to give instructions. In spite of the close involvement of her husband in these proceedings, they are hers, and she should be present to at least hear what takes place and to be available to give instructions if issues arise during the conduct of the fraud proceedings which would require such instructions. In her present state of health, as deposed by Dr Sawrey, and given the medication that the plaintiff is now receiving, I have deep concerns as to whether her presence would be possible. That, on its own, would be sufficient to persuade me that, with great reluctance, an adjournment is required.

[4] However, the other matters which concern me are the effect of the break-in of Mr Hickling's office, the consequent unavailability of essential documents for trial and the difficulties that may cause the plaintiff in the presentation of the evidence on her behalf, particularly that of Mr Kedzlie. I also have a residual concern that these matters are all going to be revisited again if we were to proceed with the trial of the fraud proceedings, in light of what appears to be new evidence available to Mr Kedzlie, which has been the subject of material put to the Serious Fraud Office, and that if proven, would provide a motivation for the concealment of documents in the disclosure process.

[5] I have to say, at this stage, that there is simply no new evidence at all which would suggest that there has been any such fraudulent conduct on the part of any present or past employee or board member of Radio New Zealand. As Mr Quigg has pointed out, if such allegations are made they must be backed by cogent evidence otherwise any counsel that is acting for the plaintiff will be in breach of his or her ethical requirements.

[6] I am not satisfied that the fraud matter is ready for trial and that the finality, at least of this aspect, so earnestly and reasonably sought by the defendant's witnesses will be achieved.

[7] So for these reasons, and with the greatest of reluctance, I grant the adjournment of the fraud proceedings, sine die.

[8] There will be terms and conditions to the grant of that adjournment similar to those that have already been addressed in relation to the grievance proceedings.

[9] In addition, I wish it to be made clear to the Court and the defendant what instructions were received in relation to the plaintiff's proposed trial counsel's availability for the 1 August hearing and whether or not trial counsel indicated at the outset his unavailability for those proceedings. Those are matters which Mr Fletcher has undertaken to address by way of a memorandum which will be filed tomorrow (3 August 2011).

[10] There will be costs consequent upon the grant of this adjournment which again may be addressed by an exchange of memoranda. I do not put a timeframe on this exchange but, if asked to, I will do so at some later stage. It is likely that those costs will be indemnity costs because of the losses that the defendant is likely to have suffered as a result of the continued preparation for this trial and the consequences of it being aborted.

[11] It is perhaps trite to say that this is likely to be the last time that these matters will be adjourned by this Court and that before these proceedings receive another fixture there will have to be safeguards put in place to avoid the debacle that has taken place this time around.

[12] I now adjourn these proceedings.

B S Travis
Judge

Oral judgment delivered at 10.51am on 2 August 2011