

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2012] NZEmpC 167
ARC 98/11**

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

AND IN THE MATTER OF an application for extension of time to file
submissions on costs

BETWEEN BRYCE TINKLER
Plaintiff

AND FUGRO PMS PTY LTD & PAVEMENT
MANAGEMENT SERVICES LTD
Defendant

ARC 30/12

AND IN THE MATTER OF proceedings removed

AND IN THE MATTER OF an application for extension of time to file
submissions on costs

BETWEEN FUGRO PMS PTY LTD & PAVEMENT
SERVICES LIMITED
Plaintiff

AND BRYCE TINKLER
Defendant

Hearing: On the papers
(Heard at Auckland)

Counsel: Mark Ryan, counsel for Mr Tinkler
Caroline McLorinan, counsel for Fugro PMS Pty Ltd & Pavement
Management Services Ltd

Judgment: 26 September 2012

INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] A judgment¹ was delivered on 3 July 2012 in relation to these proceedings, dismissing Mr Tinkler's challenge to the Employment Relations Authority's preliminary determination.

[2] The parties were encouraged to agree costs between themselves. That has not proved possible. Directions were made that Fugro PMS Pty Ltd & Pavement Management Services Ltd ("Fugro") was to file and serve any memorandum and supporting material in relation to costs within 60 days of the date of the judgment, with Mr Tinkler to file and serve any memorandum in response within a further 30 days. Fugro has filed and served an application for costs, together with supporting material. Mr Tinkler has not. The timeframe for doing so expires tomorrow, 27 September 2012.

[3] Mr Ryan, counsel for Mr Tinkler, has sought an extension of time to Friday 19 October 2012. That application is opposed by counsel for Fugro. Both counsel are content for the application to be dealt with on the papers.

[4] The basis on which the extension of time is sought reduces to two grounds. Firstly, that counsel has not received any instructions from his client in relation to the application for costs filed on behalf of Mr Tinkler and secondly, that counsel has been involved in what is said to be a protracted and complex criminal trial in the Auckland District Court. Counsel advises that the trial was due to continue until 25 September 2012, and that he leaves New Zealand for two weeks on 27 September 2012.

[5] Counsel for Fugro, Ms McLorinan, opposes the extension sought on the ground that:

Counsel has a habit of asking for extensions for time in this matter which serve only to unnecessarily delay matters for our client.

[6] While reference is made to habitual requests for extensions in these proceedings such requests are not readily identifiable, and have not been specifically referred to by counsel.

¹ [2012] NZEmpC 102.

[7] The request for an extension lacks detail. It is not clear whether counsel's availability to attend to matters has been significantly impaired by virtue of the District Court proceedings for the whole of the 30 day period allowed for in the original timetabling orders, and (if not) why matters could not have been attended to at an earlier stage. Nor is it clear what steps, and when, have been taken to obtain instructions.

[8] The Court has broad discretion to extend time. I accept that delays in dealing with costs and bringing proceedings to a conclusion to enable a party to enjoy the fruits of its success are undesirable. However, considering all matters identified by counsel for both parties I am satisfied that it is in the broader interests of justice that the timeframe for filing should be extended to enable Mr Tinkler to be heard in relation to the issue of costs. An extension of time is accordingly granted until 4 pm on 19 October 2012. Any submissions and supporting material are to be filed and served within that timeframe.

Christina Inglis
Judge

Judgment signed at 3pm on 26 September 2012