

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2012] NZEmpC 100  
ARC 8/12**

IN THE MATTER OF proceedings removed from the  
Employment Relations Authority

BETWEEN MARITIME UNION OF NEW ZEALAND  
Plaintiff

AND PORTS OF AUCKLAND LIMITED  
Defendant

Hearing: Following a telephone conference call on 26 June 2012  
(Heard at Auckland)

Counsel: Simon Mitchell, counsel for plaintiff  
Richard McLraith, counsel for defendant

Judgment: 27 June 2012

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**INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS  
ON APPLICATION FOR ADJOURNMENT**

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[1] This proceeding is currently set down for hearing on 18 and 19 July 2012. An issue has arisen in relation to the availability of a witness for Ports of Auckland Limited (POAL), Mr Gibson. Mr Gibson is a key witness in these proceedings as he made the decision to issue the trespass notice against Mr Phillips. The validity or otherwise of the notice is at the heart of the proceedings.

[2] Mr Gibson is not now available for the hearing as he is going to be overseas. POAL have accordingly applied for an adjournment, based on Mr Gibson's unavailability.

[3] Mr Mitchell, on behalf of the union, opposed the application.

[4] A telephone conference call was convened on 26 June 2012 to hear further from counsel in relation to the application.

[5] Possible options were canvassed in respect to the way in which matters might be progressed (in the absence of an adjournment), including the possibility of Mr Gibson swearing an affidavit and the parties conferring after the conclusion of the evidence as to whether he was required for cross-examination. I do not regard this as a satisfactory option. It would lead to a split hearing, in the event that Mr Gibson was required for cross-examination.

[6] A further issue was raised as to whether Mr Gibson could give his evidence via video link from overseas. Mr McIlraith advised that he had made enquiries in relation to this but that it was not a feasible option.

[7] The Court is able to accommodate alternative dates in early August (8 and 9 August) for the hearing of this matter. Accordingly there would be little delay occasioned by an adjournment.

[8] I accept that the union is keen to have this matter dealt with expeditiously. Ultimately, the Court must be guided by the interests of justice in determining an application for adjournment. I have not been able to identify any real prejudice to the union in deferring the current fixture dates for a brief period. I am satisfied that, on the basis of the information before the Court and after weighing the competing considerations, that an adjournment ought to be granted.

[9] The fixture for 18 and 19 July 2012 is accordingly vacated. The proceedings will be heard on 8 and 9 August 2012. The timetabling orders currently in place will be extended, with the parties to file written submissions by Friday 3 August 2012.

[10] Costs are reserved.

Christina Inglis  
Judge

Judgment signed at 11.45am on 27 June 2012