

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2012] NZEmpC 123  
ARC 39/12**

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

AND IN THE MATTER OF an application for stay

BETWEEN                    PACIFIC FLIGHT CATERING  
LIMITED  
First Plaintiff

AND                            PRI FLIGHT CATERING  
Second Plaintiff

AND                            SERVICE & FOOD WORKERS'  
UNION NGA RINGA TOTA INC  
First Defendant

AND                            VA'A NGAKAU  
Second Defendant

AND                            SONNY TUITI  
Third Defendant

AND                            KEVIN MEHANA  
Fourth Defendant

AND                            SALA PARKER  
Fifth Defendant

Hearing:            27 July 2012 by telephone conference call  
(Heard at Auckland)

Appearances: Rosemary Childs, counsel for plaintiffs  
Timothy Oldfield, counsel for defendants

Judgment:        27 July 2012

---

**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE G L COLGAN**

---

[1] The Employment Relations Authority has ordered the plaintiff to pay penalties for breach of the Employment Relations Act 2000 amounting to \$20,000 in total. The first plaintiff has challenged the Authority's determination<sup>1</sup> by hearing de novo. It is concerned that if it pays the amounts awarded by the Authority to the individual defendants (\$2,500 each, totalling \$10,000) and it is then successful on its challenge, it may be difficult to recover these monies.

[2] The first plaintiff therefore seeks a stay of execution of the Authority's determination on condition that it pays the penalties into court, to be held on interest bearing deposit pending the outcome of its challenge.

[3] The defendants (with the exception of the fifth defendant from whom Mr Oldfield is still to obtain instructions) do not oppose a stay on these conditions and on condition that the challenge is prosecuted expeditiously. Although I will make an order in respect of this defendant, he will have leave to apply on notice to vary or set aside the order because he has not yet been notified of this application.

[4] I am not prepared to stay the Authority's order in respect of the penalties, amounting to \$10,000, payable to the Crown. No difficulties in recovery of these monies will be encountered by the first plaintiff if it is successful on its challenge. The orders of the Authority in this regard should therefore be complied with and promptly. There will be a stay on conditions in respect of the penalties payable to the individual defendants.

[5] The Court's order is, therefore, that execution of the Authority's orders for penalties payable to the defendants is stayed on the following conditions:

- The first plaintiff is to pay to the Registrar of the Employment Court at Auckland, no later than 4 pm on Wednesday 1 August 2012, the sum of \$10,000, to be held by the Registrar on interest bearing deposit and to be disbursed only by order of a Judge of the Court.

---

<sup>1</sup> [2012] NZERA Auckland 200.

- The first plaintiff is to pay the penalties of \$10,000 awarded to the Crown no later than 4 pm on Wednesday 1 August 2012.
- The first plaintiff is to prosecute its challenge expeditiously.

[6] There will be a further telephone directions conference at 9 am on Friday 3 August 2012 to timetable the challenge to a hearing.

[7] Leave is reserved for either party to apply for any further interlocutory orders or directions on reasonable notice.

[8] Costs on this application are reserved.

GL Colgan  
Chief Judge

Judgment signed at 4.30 pm on Friday 27 July 2012