

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2012] NZEmpC 171
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: By memorandum of submissions filed on 2 October 2012
 (Heard at Auckland)

Appearances: Anthony Drake and Rosemary Childs, counsel for plaintiffs
 Peter Cranney, counsel for defendants

Judgment: 4 October 2012

INTERLOCUTORY JUDGMENT NO 2 OF JUDGE CHRISTINA INGLIS

[1] The plaintiffs seek an order staying a costs determination of the Employment Relations Authority (the Authority) dated 18 September 2012,¹ pending the outcome of their challenge before the Court (set down for hearing on 4 and 5 February 2013). The costs determination followed an earlier substantive determination of the Authority dated 13 June 2012,² in which it ordered the first plaintiff to pay a total of \$20,000 by way of penalties for breach of s 130 of the Employment Relations Act 2000, \$10,000 of which was to be paid directly to the employee defendants.

[2] The Court ordered a partial stay of the Authority's substantive determination on 27 July 2012.³ The Authority proceeded to determine costs.

[3] The parties have filed a joint memorandum, consenting to a stay of the Authority's costs determination pending the outcome of the plaintiffs' challenge to the Court. That is on the basis that the total costs (including fees and disbursements) are paid into Court and held on interest bearing deposit.

[4] In the circumstances, it is appropriate that a stay, on the terms sought, be granted. Accordingly, orders are made (by consent) as follows:

Execution of the Employment Relations Authority's orders for the plaintiffs to pay \$4,500 costs, \$71.56 fees, and \$82.60 witness expenses in its costs determination dated 18 September 2012 ([2012] NZERA 327) is stayed on the following condition:

The plaintiffs pay the Registrar of the Employment Court at Auckland, no later than 4 pm 12 October 2012, the sum of \$4,654.16, to be held by the Registrar on interest bearing deposit and to be disbursed only by order of a Judge of the Court.

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

¹ [2012] NZERA Auckland 327.

² [2012] NZERA Auckland 200.

³ [2012] NZEmpC 123.

[6] Costs on this application are reserved.

Christina Inglis
Judge

Judgment signed at 4pm on 4 October 2012