

**IN THE EMPLOYMENT COURT
WELLINGTON**

**[2012] NZEmpC 175
WRC 18/12**

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

BETWEEN MARUNUI GRAEME MEROITI
Plaintiff

AND LINDALE LODGE LTD
Defendant

Hearing: (by written memorandum dated 24 September 2012 and telephone
directions conference held on Monday, 8 October 2012)

Counsel: Graeme Ogilvie, advocate for the plaintiff
Alan Knowsley, counsel for the defendant

Judgment: 8 October 2012

INTERLOCUTORY JUDGMENT OF JUDGE A D FORD

[1] On 27 August 2012, I issued a minute to the parties containing timetabling orders leading up to a fixture in this case commencing 29 November 2012. In my minute I specifically recorded that Mr Knowsley, counsel for the defendant, had informed the Court of a potential difficulty in relation to the fixture date because one of the defendant's witnesses had suffered an injury and would not be able to travel to New Zealand from Australia until late November 2012.

[2] On 24 September 2012, Mr Knowsley filed a memorandum advising the Court that because of the required recovery period during which she is unable to fly, the witness will not be able to travel to New Zealand until February 2013. Mr Knowsley, therefore, sought an adjournment of the fixture until the first available dates in February 2013.

[3] Mr Ogilvie, advocate for the plaintiff, advised the Court that he had been instructed to oppose the application and I heard submissions on the issue in the course of a telephone directions conference this morning.

[4] Mr Knowsley confirmed that the witness in question, Ms Jill Meroiti, is the “owner and director of the defendant” and, therefore, one of the defendant’s “main witnesses”. Ms Meroiti is the plaintiff’s sister-in-law.

[5] A detailed medical report has been provided to the Court confirming the nature of the injury Ms Meroiti sustained which required recent surgery to her left Achilles tendon. Her physiotherapist stated:

... Due to the complicated nature of Jill’s surgery she can expect a lengthy rehabilitation period. I expect this will last approximately 6 to 12 months after removal of her cast, with the first 3-4 months being a critical rehabilitation period.

[6] Although Mr Ogilvie indicated that the plaintiff was anxious to have his claim heard, he was unable to refer to any specific prejudice resulting from the adjournment application.

[7] The principles applicable to adjournment applications were considered by Judge Travis in *Snowdon v Radio New Zealand Ltd.*¹ The paramount consideration is always the need to do justice between the parties. Judge Travis referred to the following passage from the decision of Tipping J in *O’Malley v Southern Lakes Helicopters Ltd.*²

The essential question which the Court always has to consider when asked for an adjournment is whether or not that is necessary in order to do justice between the parties. One must not overlook that not only is it necessary to do justice to the party who is seeking the adjournment but also Justice to the party who wishes to retain the benefit of the fixture. It is essentially a balancing exercise.

[8] I am satisfied that the application for an adjournment is appropriately made in the present case and the application is duly granted. The fixture for 29 November 2012 is accordingly vacated.

¹ [2011] NZEmpC 96 at [30].

² HC Christchurch CP 513/89, 4 December 1990 at 1-2.

[9] I will issue a further minute with an amended timetabling order and a new fixture date.

A D Ford

Judge

Judgment signed at 2.30 pm on 8 October 2012