

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2013] NZEmpC 120
ARC 91/10**

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

BETWEEN LAURA JANE GEORGE
Plaintiff

AND AUCKLAND COUNCIL
Defendant

ARC 124/10

IN THE MATER OF proceedings removed

AND IN THE MATTER of application for leave to admit new
evidence

BETWEEN AUCKLAND COUNCIL
Plaintiff

AND LAURA JANE GEORGE
Defendant

Hearing: 4 July 2013
(Heard at Auckland)

Appearances: Tony Drake, counsel for Ms George
Tim Clarke and Elizabeth Coats, counsel for Auckland Council

Judgment: 4 July 2013

ORAL INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] The Auckland Council (the Council) has applied for leave to admit new evidence. The application comes after the evidence for both parties has been taken. The evidence relates to the interest rates applicable to the various banking facilities

provided to the Council by Bank of New Zealand (BNZ) between 1 July 2007 and 31 October 2010. This information had previously been sought by Mr Drake on behalf of Ms George but had not been provided on the basis that it was not available.

[2] These proceedings were set down for two weeks from 13 May 2013. In the event the evidence concluded within that time and there was an adjournment until today's date for submissions.

[3] It is apparent that the Council obtained the material that is the subject of the application on 9 May 2013, the week before the hearing commenced. It is said that the Council did not pass the material on to counsel acting on its behalf until 18 June 2013. The application was filed two weeks later.

[4] Mr Drake opposes the application. In essence he says that there are no extraordinary circumstances that might otherwise warrant the grant of leave; if the evidence was admitted it would needlessly prolong the hearing; the cases referred to by Mr Clarke in support of the application are distinguishable and he says that the material is not new.¹

[5] The Court has a broad discretion to admit further evidence where the interests of justice so require. However, as the previous Chief Judge of the Employment Court pointed out in *Petersen v Board of Trustees of Buller High School*², the discretion may be exercised only in exceptional circumstances.

[6] I am not satisfied that leave ought to be granted. It is clear that the Council received the information from BNZ a week before the hearing. I accept that it was not passed on to the Council's legal advisors until some two weeks after the parties had concluded their evidence. It was Ms Naidoo, the current Manager of Finance Systems and Processes, who received the information from BNZ. Ms Naidoo had previously sworn an affidavit on 25 March 2013 in relation to discovery issues in the context of this proceeding and it appears from the documentation filed that she was also one of the people who worked with Ms George and who was interviewed by Mr

¹ Addendum: Orally reference was mistakenly made to "relevant". I had intended to say "new", which was Mr Drake's submission on the point.

² CC 27A/01, 15 November 2001 at [3].

Bremner in the course of his investigation. The delay in passing on the material is not explained. In the circumstances, while I accept that the material is relevant, and might otherwise assist the Court, I do not consider that it is in the broader interests of justice to admit it, including having regard to the potential prejudice to Ms George and the unexplained delay in providing the information to Mr Clarke and Ms Coats. I decline to exercise my discretion to admit it. The application is accordingly dismissed.

[7] Ms George is entitled to costs on the application and these will be reserved.

Christina Inglis
Judge

Oral judgment delivered at 10.15 am on 4 July 2013