IN THE EMPLOYMENT COURT
WELLINGTON

[2013] NZEmpC 176
WRC 17/04
WRC 19/05
WRC 8/09

IN THE MATTER OF	an application for orders
BETWEEN	LYNNE FRANCES SNOWDON Plaintiff
AND	RADIO NEW ZEALAND LIMITED Defendant

Hearing: (on the papers)

Appearances: Mr Carruthers QC and Mr Fletcher, counsel for the plaintiff
Mr Quigg, counsel for the defendant

Judgment: 26 September 2013

INTERLOCUTORY JUDGMENT OF JUDGE A D FORD

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[1] A six-week hearing for these consolidated cases is set to commence next Monday, 30 September 2013 at 9.30 am. As I noted in another interlocutory judgment dated 5 September 2013,[1] the litigation has its origins in a personal grievance first raised by Ms Snowdon as far back as 15 November 2002.

[2] On 23 September 2013, counsel acting for New Zealand on Air (NZOA), Ms Shreves, sent an email to the Registrar, informing the Court that the Chief Executive of NZOA had been served with a witness summons in respect of these proceedings. Noting that NZOA was not a party to the proceedings and that the summons sought "an enormous amount of information", it requested that it be set aside on the grounds that it "imposes a hardship" on the organisation and is "onerous and oppressive".

[1] [2013] NZEmpC 168.

[3] The following day, on 24 September 2013, counsel for the defendant, Mr Quigg, filed a "Memorandum of Counsel for the Defendant to Set Aside Witnesses Summonses". The opening paragraphs of the memorandum state:

> 1. The Defendant has become aware that on Thursday 19 September the plaintiff obtained witness summonses from this Court which have been served or are in the process of being served upon the Chairman of Radio New Zealand, the Chief Executive Officer of the Broadcasting Commission (otherwise known as New Zealand on Air) and the Chief Executive Officer of the Ministry for Culture and Heritage. These summonses require these persons to attend before this Court on 30 September 2013 (excepting the Broadcasting Commission on 31 September 2013) and to bring respectively with them a large number of documents.
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> 2. The Defendant considers that the above summonses are an abuse of process as they seek to circumvent the orders made by this Court in these proceedings that discovery is complete.
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> 3. This matter is set down to be heard commencing on Monday 30 September 2013 after 9 years.

[4] On the same day, counsel for the plaintiff filed a brief memorandum in response pointing out that the memorandum filed by counsel for the defendant had not been accompanied by any application for an order. The plaintiff asked that such application, when filed, be served on recipients of the witness summonses "so that, if they so desire, they may be heard on the application."

[5] A formal application by the defendant to set aside the witness summonses was filed on 25 September 2013.

[6] This morning, on 26 September 2013, an application was filed by Crown Law on behalf of the Chief Executive of the Ministry for Culture and Heritage (the Ministry) seeking to have the witness summons served on him at 3.00 pm yesterday set aside on the grounds that it is oppressive and an abuse of process. Crown counsel notes that the Ministry is not a party to the proceedings and goes on to state:

> 5.2. the documents sought are wide ranging and date back to 2000 and so extensive searching and significant time would be required in order to comply with the summons. With the hearing now only two working days away, it is unlikely that the order could be complied with.

[7] As yet, no submissions have been filed by the plaintiff in response to the submissions made by Mr Quigg in his memorandum filed 24 September.

[8] Time is at a premium and the witnesses are entitled to know promptly where they stand. Each of the summonses requires the production of extensive documentation going back to 1999/2000. Even if submissions were filed on behalf of the plaintiff later today or tomorrow, because of other commitments, it is clear that the Court will not be in a position to issue a considered interlocutory judgment on the matter prior to the commencement of the hearing. In any event, there is no agreement that the matter can be dealt with on the papers without a hearing.

[9] The Court has jurisdiction under reg 34(3) of the Employment Court Regulations 2000 to set aside a witness summons where the Court considers it to be oppressive; or causes, by reason of distance or short notice, undue hardship to the witness. The Court also has an implied power to prevent abuse of its processes.

[10] On the basis of the submissions contained in the documentation filed to date, I am satisfied that the summonses in question are oppressive and will cause undue hardship to the respective witnesses if they are required to produce the documentation sought at such short notice.

[11] Accordingly, each witness summons is set aside. Costs are reserved.

A D Ford
Judge

Judgment signed at 12.05 pm on 26 September 2013