

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2013] NZEmpC 218  
ARC 26/13**

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

AND IN THE MATTER    of an application for adjournment

BETWEEN                 STEPHEN CROSS  
   Plaintiff

AND                         ONERAHI HOTEL LIMITED  
   Defendant

Hearing:                 27 November 2013 (by telephone conference call)  
   (Heard at Auckland)

Appearances:          Plaintiff in person  
   Mrs Ryan, representative for defendant

Judgment:              27 November 2013

---

**ORAL INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS**

---

[1]      This proceeding relates to a challenge to a determination of the Employment Relations Authority, finding that the plaintiff's dismissal from his employment at the Onerahi Hotel was unjustified but that he contributed 100 per cent to the losses he sustained.<sup>1</sup>

[2]      A fixture was allocated following a directions conference on 20 September 2013, and with the agreement of both parties. The hearing is set down for three days in Whangarei, commencing on 11 December 2013 (now less than two weeks away).

[3]      The defendant has applied for an adjournment of the hearing. A parallel application by the defendant for an extension of time to file and serve its briefs of

---

<sup>1</sup> [2013] NZERA Auckland 104.

evidence was granted by consent. The application for an adjournment is advanced on the grounds that two of the defendant's proposed witnesses will have difficulty appearing at the hearing due to what is said to be a change in their circumstances. It appears that one witness (a Mr Bell) has commenced new employment within the last month and there is a concern that an absence to attend court may be viewed unfavourably. Another witness (Mr Gardner) is an owner-operator of a new business, with a shortage of suitably qualified staff at present. He no longer resides in Whangarei although I understand he now lives not far away in Wellsford. He will, I am told, find it extremely difficult to be absent from his business in the pre-Christmas period. Mrs Ryan, as representative of the defendant, has indicated that the witnesses would be available in 2014, with the exception of some dates in March and April.

[4] Mr Cross, who appears on his own behalf, strongly opposes the application for an adjournment. He raises the valid concern that if an adjournment is granted, the litigation process will likely extend out longer than the term of his employment with the hotel. He wishes to have the matter finally concluded.

[5] In determining an application for an adjournment, the paramount consideration is the overall interests of justice. As Tipping J put it in *O'Malley v Southern Lakes Helicopters Ltd*:<sup>2</sup>

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.

[6] I also consider it relevant to have regard to the broader public interest in the efficient disposition of cases and the otherwise silent interests of other litigants who are waiting for a fixture. The reality is that court time is relatively scarce. An adjournment, particularly one that comes at a late stage, is disruptive – not just to the parties, but to others who wish to have their matters brought before the Court.

---

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

[7] It is apparent from the pleadings that a primary focus will be on discussions between Mr Gardner (the then manager of the hotel) and Mr Cross in February 2012, and events leading up to and immediately following which appear to have predominantly (although not exclusively) involved the two men.

[8] While the defendant has concerns about the availability of two of its proposed witnesses, only one appears to be what could be regarded as a key witness in terms of the events at issue. And while I have a degree of sympathy for those witnesses in terms of their commitments at this time of year, and having regard to their personal circumstances, this must be balanced against other relevant factors.

[9] The Authority issued its determination in March 2013. The events complained of occurred a year previously. The plaintiff is entitled, absent good reason, to have his challenge dealt with in a timely manner. It is not, in my view, desirable for the hearing to be pushed into next year. Further (and as Mrs Ryan accepts), the dates were discussed some time ago and agreed to by the defendant. The application comes two weeks before the hearing. Other alternatives exist which may go some way towards meeting the concerns identified on behalf of the defendant, including extending a degree of flexibility in terms of when, and how, the witnesses will be required to give evidence, and mechanisms are available to deal with proposed witnesses who might otherwise be reluctant to attend or who may confront difficulties in securing time off work.

[10] Balancing all matters before me, I am not satisfied that it is in the overall interests of justice to grant the adjournment and the application is accordingly declined.

[11] Costs are reserved on the application.

Christina Inglis  
Judge

Judgment delivered orally at 3.05 pm on Wednesday 27 November 2013