

[4] The Court may grant an extension of time for filing a challenge. The principles for the exercise of the Court's discretion to make orders extending time are well established.² A range of factors may be relevant, depending on the circumstances of the case, including the reason for the omission to bring the case within time, the length of the delay, any prejudice or hardship to any other person, the effect on the rights and liabilities of any person, and the merits of the substantive case. The overriding consideration is the justice of the case.

[5] Mr Hegedus says that he attempted to file a statement of claim on 9 November 2011 five days after the time for challenge had expired. It was rejected for being out of time. The earlier delay was then compounded by substantial further delays, with an application for leave not being filed until some 12 months later. In his affidavit, Mr Hegedus says that he was confronting financial difficulties, was having problems securing the services of a lawyer, and had limited time available. He also says that he required time to collect relevant information. Reference is made to "communication problems" with the Authority in terms of understanding "next steps". However there is a lack of detail as to the nature of the difficulties that the applicant says he was confronting or when they arose.

[6] The respondent submits that the difficulties identified by the applicant do not adequately explain the significant period of the delay. I agree. The material before the Court falls well short of explaining the initial, or subsequent, delay that occurred.

[7] I have regard to the determination of the Authority and the parties' submissions in assessing the relative merits of the proposed challenge. The task is not without difficulty, as much depends on the way in which the evidence would emerge on a de novo challenge. However, the Authority's determination is thorough and reasoned, and the relevant principles of law are identified. As the Authority Member pointed out, the applicant carried the burden of showing that his dismissal was not a genuine redundancy.³ He was found not to have discharged that burden on the basis of the facts established during the course of the Authority's investigation. There is no demonstrable error on the face of the Authority's determination.

² *Stevenson v Hato Paora College Trust Board* [2002] 2 ERNZ 103 at [8].

³ At [29].

[8] On the basis of the information currently before the Court, I am unable to discern any obvious errors in the process adopted by the respondent, and nor is there anything that would otherwise support the applicant's allegations of predetermination and/or ulterior motive. The Authority Member described these claims as "bare assertions" without any corroboration.⁴ No additional material has been referred to that might otherwise support the applicant's claims.

[9] There is a further impediment to Mr Hegedus's proposed challenge. Section 160(1)(f) of the Act allows the Authority to "follow whatever procedure [it] considers appropriate". Section 179(5) circumscribes the matters that the Court may entertain on a challenge. A challenge cannot be advanced as to the procedure followed by the Authority. This is relevant to the principal claim that the applicant wishes to advance, namely, that the Authority was wrong to refuse to use teleconferencing during the course of its investigation. That claim is unlikely to succeed, in light of the relevant statutory provisions.

[10] I consider, based on the information currently before the Court, that the applicant's case is very weak.

[11] Counsel for the respondent does not seek to argue that the respondent is unduly prejudiced by the delay, or that the rights and liabilities of others are relevant factors in the circumstances. It is however submitted that it would be inconsistent with the broader interests of justice to grant leave. That is because the applicant has failed to diligently pursue his claim. In this regard it is apparent that three investigation meetings were cancelled before the Authority at Mr Hegedus' request. Counsel for the respondent submits that the respondent should not be obliged to defend a challenge in circumstances where the applicant has displayed a lack of vigour in pursuing his claim to date and where the claim is demonstrably weak. I accept that the history of the proceedings, and the delays that have occurred, are relevant to a consideration of the application.

⁴ At [19].

[12] Having regard to the circumstances, I do not consider that it is in the interests of justice that leave be granted, and I accordingly decline to exercise my discretion in the applicant's favour.

[13] The application for leave to extend the time for filing a challenge to the Authority's determination is dismissed.

[14] It may be that no issue of costs arises. If, however, costs remain an issue, they can be the subject of an exchange of memoranda, with the respondent filing and serving submissions and any material in support of an application within 20 days of the date of this judgment and the applicant filing and serving any submissions and material within a further 20 days.

Christina Inglis
Judge

Judgment signed at 12 noon on 7 March 2013