**IN THE EMPLOYMENT COURT**
**AUCKLAND**

**[2013] NZEmpC 30**
**ARC 47/12**

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| IN THE MATTER OF | an application for an extension of time to file a challenge |
| BETWEEN | TONY LOOKER<br>Applicant |
| AND | AG WALTER AND SONS LTD<br>Respondent |

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| Hearing: | On the papers<br>(Heard at Auckland) |
| Counsel: | Marcus Paewai, advocate for the applicant<br>Richard Upton, counsel for the respondent |
| Judgment: | 12 March 2013 |

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**JUDGMENT OF JUDGE B S TRAVIS**

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[1] The applicant, Tony Looker, has applied for leave to extend the time for filing a challenge to a determination[1] of the Employment Relations Authority (the Authority) issued on 28 June 2012. The parties agreed that the matters could be determined on the papers they filed, without the need for a hearing.

[2] There appears to be no issue between the parties that the challenge was attempted to be filed one day out of time on 27 July 2012. The application for the extension of time was filed on Monday 30 July, supported by an affidavit of the applicant's representative in these proceedings, Marcus Mitchell Paewai.

[3] The respondent filed a notice of opposition to the application on the following grounds:

[1] [2012] NZERA Auckland 221.

- that no adequate explanation had been advanced as to why the challenge was filed out of time;

- that the applicant had previously breached the Authority's timeframes for filing evidence and costs submissions;

- that the respondent would be prejudiced if the application was granted;

- that the challenge was lacking in merit;

- that the overall justice did not require the application to be granted and that equity and good conscience favoured the respondent's position.

[4] Following a directions conference held on 31 August 2012, I issued a minute observing that the application for the extension of time was opposed and that the applicant would need to file and serve further affidavits as to the merits of the challenge. I stated that the Court would not normally grant an extension of time to file a challenge out of time unless there are prospects of the challenge succeeding. The parties agreed to a timetable for the filing of affidavits and submissions. I expressly noted that any application to extend the time for compliance with the directions was required to be made before the time had expired. I stated that if the timetable was not complied with and leave had not been obtained in advance to extend it, then either the application for leave would be dismissed or the respondent barred from defending.

[5] The applicant duly filed, in accordance with the timetable, an affidavit he swore on 28 September 2012, which dealt in considerable detail with, amongst other things, attacks on the credibility of the witnesses relied on by the respondent and in particular the complainant, whose allegations directly led to Mr Looker's dismissal.

[6] The respondent replied with affidavits from its Business Development Manager, Brian Piper and its Operations Manager, Iain Roderick Linton. Both were involved in the investigation of the allegations against Mr Looker and attended the disciplinary meeting which led to Mr Piper deciding to dismiss Mr Looker

summarily. Both affidavits address the prejudice they allege the respondent will suffer if leave is granted.

[7] Both of the respondent's deponents stated they knew that Mr Looker was a determined and difficult individual and always thought there was a chance that he would challenge the Authority's determination. They did not want that to happen because they believed that their decision to dismiss was right and because they had other things that they would rather be focusing on than defending claims that they believed had "no merit".

[8] They depose that they paid close attention to the calendar as the timeframe for challenging counted down. When the timeframe for challenging expired and no challenge had been filed, Mr Piper says that he felt relieved, especially as the applicant had been seeking to be reinstated. He stated it was not until 2 August 2012 that the challenge was served on the respondent. Mr Piper stated he was very disappointed as he had concluded that the matter was behind them. Mr Linton expressed similar sentiments and concerns about the applicant's claim for reinstatement.

[9] Mr Linton deposed that the application for costs against the applicant in the Authority had been filed but that the applicant had not filed his costs submissions within the required timeframe. He states that they did not want to follow up about costs until the timeframe for the challenge had expired and they waited until the following week before instructing their lawyer to "chase the Authority to determine costs".

[10] Mr Piper deposed as to Mr Paewai's failure to meet timetabled deadlines in the Authority and claimed that Mr Paewai had still obtained indulgencies and concessions notwithstanding his failures.

[11] The respondent's deponents both addressed the circumstances of the dismissal and were adamant that they had adequate grounds for finding Mr Looker had been guilty of serious misconduct.

[12] On 14 November 2012, Mr Paewai sought leave to extend the timetabled deadline of 16 November 2012 to file submissions, on the ground that he had received notice on 13 November of the passing of a whanau member and, although the date for burial had yet to be finalised, it was likely to be on the date that the submissions were due or on the day after. He sought leave to extend the time to 23 November. He accepted that the timeframe for the filing of the respondent's submissions would also need to be extended.

[13] Mr Upton, counsel for the respondent, filed, on 14 November, a notice of opposition to the application for an extension of time on the basis that the application was deficient and not supported by any evidence. As an alternative, he submitted that the extension sought of five extra working days was excessive and if the Court was prepared to grant the extension, one extra working day would suffice. He also contended that the applicant had had sufficient time to prepare the submissions.

[14] On 15 November Mr Paewai responded, referring to Maori tikanga relating to the passing of whanau members but did not provide the details that Mr Upton contended ought to have been provided. Mr Paewai suggested that such details as were requested were obtainable, if required, after the grieving period.

[15] By a minute on 15 November I granted the extension sought on the assumption that there had been a bereavement which required Mr Paewai's attendance and there was no evidence of any prejudice to the respondent. I required Mr Paewai, after the grieving period, to provide the details of the bereavement and of the tangi to satisfy Mr Upton's contention that it may not be genuine. I observed that this might bear on the matter of costs. I required the details to be provided in an affidavit to be filed along with the applicant's submissions, which were all required to be filed by 4pm on Friday 23 November 2012.

[16] Nothing was filed on behalf of the applicant by that date.

[17] On 27 November Mr Paewai filed a memorandum seeking leave to extend the time for the service of an affidavit. It stated:

1. I seek leave for extension of time for the purpose of locating the signature of Court Registrar which could not be located before the required 4pm, 27 June 2012 deadline.

2. Providing the Court extend the extension of time from the 23 November when the electronic fault was first appeared but noticed on the 25 November 2012

3. This was due to technical issues with electronic hard ware experienced on 23 November 2012 which rolled over to the 26-27 November 2012.

4. The problem will be looked at in depth on the 27 November and accordingly a technicians report will be tabled if required in an affidavit format.

[18] It was accompanied by an affidavit sworn by Mr Paewai on 27 November giving details of the bereavement. On the same day Mr Paewai filed his submissions in support of the application for an extension of time to file the challenge and another memorandum seeking leave to extend the time for filing the submissions from 23 November "by one working day to the 26 November 2012" on the grounds of the following:

1. I the above Marcus Mitchell Paewai seek leave to extend the 23 November 2012 by one working day to the 26 November 2012 on the grounds of the following.

2. In the afternoon of 23 November 2012, a submission for the 23 November had been completed and a copy was emailed to my assistant to be proof read and returned for service to my email address.

3. Having completed the proof read the assistant promptly returned the document to my email box where I forward a copy onto the defendants Council and two copies to the Employment Court.

4. The following day my email was checked and the PDF was opened to see of I had left out any minor detail

5. It was at this time I noticed the document had been altered and distorted in transition with deleted text merged with supposed text.

6. The material needed to be transferred to Microsoft PDF program and reedited which I have worked on over night.

7. My computer has been under going some major up grading and this hasn't been going well I have contacted QMB Computers to invoice me with a copy for the Courts.

> 7. The Plaintiff Representative apologies to the Court and the Defendant for any inconvenience this may cause.
>
> (As original text)

[19] Although this memorandum was dated 26 November it was not filed until 27 November.

[20] Mr Upton wrote to the Court on 28 November complaining that Mr Paewai had again breached a judicial timetable. He also advised the Court that he had received a copy of the applicant's submissions at 4.03pm on 23 November, he did not receive the affidavit about the tangi at all. On Monday 26 November Mr Paewai sent him an email stating that the earlier submissions should be disregarded and later that day he received revised submissions completely different from the original. He submitted that they were not the original submissions with some formatting modifications. The affidavit was not served until 28 November.

[21] Mr Upton submitted that the applicant's ongoing failures to adhere to both the Authority and the Court's timetables must be seen to be relevant to the application for an extension of time to pursue the challenge. He also contended that the applicant's actions had put the respondent to unnecessary costs in having to review two sets of submissions and to write to Mr Paewai and the Court about Mr Paewai's failures to address matters in a timely manner.

[22] The principles applicable to the exercise of the discretion to grant an extension of time under s 219 of the Employment Relations Act 2000 (the Act) were helpfully summarised in *An employee v An employer:*[2]

> [8] The discretion conferred by s 219 is not subject to any statutory criteria. Like any other discretion conferred upon the Court, however, it must be exercised judicially and in accordance with established principles.
>
> [9] The fundamental principle which must guide the Court in the exercise of its discretion is the justice of the case. Does the justice of the case require that the extension of time sought be granted? In their detailed submissions about what the interests of justice are in this case, both Mr Beck and Ms French adopted the headings used by Goddard CJ in *Day v Whitcoulls Group Ltd* [1997] ERNZ 541 and by Shaw J in *Stevenson v Hato Paora College* [2002] 2 ERNZ 103:

[2] [2007] ERNZ 295.

1 The reason for the omission to bring the case within time.

2 The length of the delay.

3 Any prejudice or hardship to any other person.

4 The effect on the rights and liabilities of the parties.

5 Subsequent events.

6 The merits of the proposed challenge.

[10] I agree that these are convenient and appropriate headings under which to consider the matters relevant to the exercise of my discretion in this case, albeit that I do so in a different order.

[11] In addition to those factors which the Court has found it appropriate to consider in considering whether to extend time for filing a challenge under s 179, I also have regard to the well established principles applicable to applications for extensions of time generally. In *Ratnam v Cumarasamy* [1964] 3 All ER 933, the Privy Council said at page 935:

> *The rules of court must, prima facie, be obeyed, and, in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation.*

[12] I also have regard to the general principle summarised by Richmond J in *Avery v No* 2 *Public Service Appeal Board* [1973] 2 NZLR 86 at 91:

> *When once an appellant allows the time for appealing to* go *by then his position suffers a radical change. Whereas previously he was in a position to appeal as of right, he now becomes an applicant for a grant of indulgence by the Court. The onus rests upon him to satisfy the Court that in all the circumstances the justice of the case requires that he be given an opportunity to attack the judgment from which he wishes to appeal.*

[23] Mr Paewai's submissions dealt with each of the six criteria headings set out in paragraph [9] of *An employee* above.

*Reason for the omission*

[24] Under the heading of the reason for the omission to bring the challenge within time, Mr Paewai, in his submissions filed on 27 November, stated that he is a lay person in these matters, he agreed to advance the applicant's case to the Employment Court as the applicant, his partner and friend had become penniless, unemployed and eventually homeless, as a consequence of these matters.

[25] He claimed that the application was required due to a combination of his ignorance and Court Administration error which came about at his "initial inquiry and filing".

*The length of the delay*

[26] Mr Paewai claimed in his submissions that he was initially told by a Deputy Registrar that the last day for filing the challenge was 26 July 2012, 28 days from the date of the 28 June determination. By his calculation he agreed with that date. He then stated that when he rechecked a week later another Court Registrar provided him with the date "30 June 2012", by which I presume Mr Paewai to mean "30 July 2012". This, he stated was a four day difference from what he was told earlier. He claimed he was unable to recheck that as the first registrar was not available. He then stated:

> 9 Regardless the date proved to be incorrect the correct date was in fact 26 June 2012 [sic] some for [sic] days off difference and therefore four days over the due date of 26 July 2012.

[27] He submitted that the late filing was therefore in error due to a contribution of his ignorance and Court administrative error.

[28] I observe with concern that Mr Paewai's submissions are materially different from what he deposed to in his 30 July affidavit. Neither the submissions nor the affidavit give the dates of his alleged discussions with the Registry staff. In his affidavit he does not state the last filing date he claims he was told by the first Court Registrar. He deposes that the following day he rang to confirm the filing date and seek additional information but spoke to a different Registrar who was unable to put him through to the first Registrar. He deposes that he discussed the filing date with the second Registrar who counted 28 days from the determination date of 28 June. He does not say what the last filing date was calculated as being but says the date he was given was inconsistent with the first Registrar's date and his own calculation. He deposes that he tried to check the inconsistency with the first Registrar, who was not available. He then deposes that the second Registrar:

> … reiterated the date which I accepted unfortunately the said date was *a day out*. [emphasis added]

> 11. This error was not noticed until late on the date of 27 June [sic] 2012 I have immediately sort [sic] the required application and affidavit for filing first thing Monday morning 30 June [sic] 2012.

[29] I assume that Mr Paewai was referring to 27 and 30 July and not June. By contrast what Mr Paewai was asserting in his submissions is that the date of "30 June", meaning 30 July, he was given by the second Registrar was four days out, not a day out, over the correct filing date of 26 July 2012. His affidavit deposes that the wrong date (not expressed) that he was given was "a day out".

[30] I have grave reservations as to the accuracy of Mr Paewai's two conflicting accounts. They are irreconcilable and leave doubt as to the true position.

[31] In Mr Upton's submissions in opposition he referred to the passage in Judge Couch's decision in the *An employee* case that:[3]

> Where an extension of time is sought, the onus is on the applicant to provide the evidence necessary to explain the delay as fully as possible.

[32] Mr Upton took issue with Mr Paewai's affidavit which did not explain why Mr Looker waited for several weeks before attempting to file the challenge and there is no explanation as to why it was left until the last minute. He also observed that Mr Paewai's affidavit is lacking in specifics about dates upon which particular steps were taken. He submitted that Mr Paewai had the responsibility, knowing of the 28 days requirement, to file within time. He also relied on other breaches of judicial timetables by Mr Paewai both in the Authority and in the Court and submitted it demonstrated a completely cavalier approach to the judicial timeframes which was another factor which he submitted must count against the applicant.

*Prejudice and the effect on the rights and liabilities of the parties*

[33] Mr Paewai submitted that there was no additional hardship or prejudice other than in the respondent having to meet the burden of proving the dismissal was fair and justified. He claimed that the applicant was therefore happy to compensate the respondent for any expense incurred should the respondent prove in Court that the

[3] At [39].

dismissal was the correct choice to make. It is difficult to reconcile that submission and Mr Paewai's earlier statement that the applicant has become penniless.

[34] Mr Upton acknowledged that the length of delay was at the lower end of the scale but submitted it had deprived the respondent of certainty and allowed the Court to exercise its discretion to decline the application if the overall justice required it. In support he cited *Brighouse Ltd v Bilderbeck*[4] in which Chief Judge Goddard observed that:[5]

> Any disruption to finality is in itself a serious detriment capable of being prejudicial.

[35] Mr Upton referred to the evidence filed on behalf of the respondent as to the impact of the time delay on Messrs Piper and Linton. He observed that although the application for leave to challenge was filed on 30 July, it was not served on the respondent for a further three days, which exacerbated the uncertainty. He submitted that the applicant had taken no steps to mitigate these delays by informing the respondent promptly of his intention to challenge. Mr Upton submitted that conscious decisions were made by the respondent as to how to progress the litigation, based on the timeframes that had been set and then not met. He also observed that Mr Looker was seeking reinstatement and, if leave was granted, this would have the effect of requiring the respondent to preserve the current position to avoid any allegations that it had attempted to interfere with the practicality of that remedy being granted. To this extent therefore, he submitted granting the application would impact on rights and liabilities to the detriment of the respondent.

*Merits*

[36] It appears to be common ground that Mr Looker was summarily dismissed on 18 October 2011 after a disciplinary meeting that had investigated the following written complaint from, Mr Looker's supervisor, who I have called the complainant:

> This morning at 5.20am i was making a cup of tea and noticed Tony Looker steering at me he then came over and said that he had a mate of his that was

[4] [1993] 2 ERNZ 74.
[5] At 86.

> coming over to my house and cut out my tongue and kill my dogs because that is what he does to nark;s
> i replied thats fine to which he said I will f------g drop you here
>
> I left the lunchroom and was halfway to the stores office when i heard him running at me from behind and shoulder barged me and said again that his mate would cut my tongue out and kill my dogs
> i preceded to ignore him and he repeated the threat again then took his shoulder off mine and again threatened me he then went outside to truck 55 and came back to the stores office and look at the screen saver and said nice puppy, dead puppy
> he then left the yard
>
> (As original text)

[37] The Authority accepted that the complainant had pictures of his own dogs as his computer screensaver and it was the screensaver that Mr Looker was referring to in the last exchange between the protagonists. The Authority found that the respondent's manager spoke with another employee who had seen the exchange although not heard the words used, and was then provided with evidence from a third member of staff who told them that Mr Looker had boasted to him that he had threatened to kill the complainant's dogs and to cut out the complainant's tongue.

[38] The respondent's evidence was that the allegations were put to Mr Looker but he denied making any threats and said he had not talked to the complainant that day. He said that he did not even know that the complainant had any dogs. Messrs Linton and Piper gave evidence that they did not believe Mr Looker and accepted the statements of the complainant and the two other employees.

[39] The Authority found at the investigation that the requirements of s 103A(3) of the Employment Relations Act 2000 had been met for the following reasons:

- the investigation was sufficient, the complaint having been reduced to writing; and

- two further statements obtained from witnesses;

- Mr Looker was summoned to a meeting and had proper representation and the allegation was put clearly to him;

- that Mr Looker had every opportunity to respond to that allegation and did so by broad denials that he had seen the complainant that day or that he knew he had dogs;

- that explanation the was properly considered by the respondent.

[40] Importantly for present purposes the Authority found that the matters of complaint raised on behalf of Mr Looker were all subsequent to the disciplinary process and not raised by Mr Looker himself when he had the chance to raise them. The Authority also found that what Mr Looker had said to the employer in the disciplinary meeting was at variance to what he told the Authority in the investigation meeting. The Authority recorded that in the investigation meeting Mr Looker had admitted that he had spoken with the complainant but denied the use of the words "complained about". The Authority concluded:

> The evidence before the Authority was that Mr Looker denied everything at the disciplinary meeting because he thought that was the best option, given that he did not have the representatives of his choice but he hardly helped himself by denying that which was (by his own admission to the Authority) absolutely untrue (his claim that he had not spoken to [the complainant] at all that day), nor did he assist his case by not making clear to Walter and Sons that he wanted a different representative.

[41] Mr Paewai opened his submissions on the merits of the challenge by submitting that no decision should be based on the applicant's financial predicament, and that the respondent was opposing the leave application to prevent its witnesses from being cross-examined. He submitted that the interests of justice supported the application, citing *Idea Services Ltd v Collins*.[6]

[42] Mr Paewai then set out what he submitted were matters that showed the motive for what had befallen the applicant and his associates. It is based on Mr Looker's affidavit evidence relating to the prior dismissal of two other employees, one of whom was his partner, in which the complainant was allegedly the informant as to one of those employees. Mr Looker has indicated that he will wish to call the evidence of his partner and her former flatmate because they allegedly go to the

[6] WC 1/09, 16 February 2009.

motive of the complainant, whose complaint also led to Mr Looker's dismissal. Those claims are denied by the respondent.

[43] The problem with this evidence, as the Authority pointed out, is that, even if it was accepted by the Court, and there is a real issue as to whether it will be in light of the evidence that Mr Upton has indicated will be led on behalf of the respondent, these were not matters that were put to the respondent by Mr Looker or his representative at the time of the disciplinary inquiry. In the absence of any allegation that the complainant or the other two witnesses interviewed before the disciplinary meeting had any reason for lying, the respondent was entitled to reach a decision which, in terms of s 103A of the Employment Relations Act 2000, a fair and reasonable employer could have reached in all the circumstances at the time. This is why the Authority directed the investigation meeting to concentrate, not on the integrity of the complainant or the corroborative witnesses or their motives, but on the disciplinary inquiry carried out by the respondent and whether it was fair and reasonable.

[44] Mr Paewai submitted that the respondent's evidence was tainted. He referred to events that allegedly took place after the dismissal which involved the subpoena issued to one of the witnesses who had corroborated the complainant's account. This apparently was in the course of preparation for the Authority's investigation meeting. He claimed there was tampering with the evidence by a representative of the respondent by approaching a witness during the hours of work. These allegations are strongly denied by the respondent. They also deal with events that occurred after the dismissal.

[45] There was no evidence led on behalf of Mr Looker to suggest that Messrs Linton and Piper, who conducted the disciplinary enquiry, were in any way implicated in the allegations made against the complainant and the corroborating witnesses. Messrs Linton and Piper were entitled, indeed bound, to determine the matter on the evidence put before them at the time. That evidence left no reasonable doubt that Mr Looker had made the threats for which he was dismissed.

[46] Mr Paewai's submissions also attacked the Authority's conclusion that the disciplinary meeting was fair and reasonable. He first contended that Mr Looker was not properly represented by the union delegate of his choice. Again, this was not an issue raised at the time. The Authority accepted the respondent's evidence that had this issue been raised the meeting would have been adjourned to enable Mr Looker to have the representative of his choice. If the union representative failed to represent Mr Looker properly, and again there is no compelling evidence in support of that allegation, it is a matter between Mr Looker and his union.

[47] Mr Paewai then submitted that the employment agreement was not properly relied on because, without knowing what the disciplinary meeting was about or having access to his chosen representative, Mr Looker was placed at a clear disadvantage. Those allegations were not raised at the time of the meeting, or, apparently, at the Authority. The evidence in support of them is not very compelling and I accept Mr Upton's submission that if there were any procedural defects they were minor and did not result in Mr Looker being treated unfairly.

[48] At the meeting itself, at which very clear allegations were put by the respondent, there is strong evidence, upon which Mr Upton relies, that Mr Looker's response was to deny that he had even spoken to or seen the complainant on the particular day in question and was not aware that the complainant had dogs. The complainant had pictures of his dogs at his worksite and the respondent led evidence that showed that it was common knowledge amongst all the staff that he owned dogs.

[49] As Mr Upton submitted, s 103A(5) of the Act would apply to any defects that might exist. That section imposes a mandatory obligation on the Court that it must not determine that a dismissal is unjustifiable solely because there are minor defects in the process the employer followed and those did not result in the employee being treated unfairly.

[50] Finally Mr Paewai dealt with the Authority's conduct of the investigation and the exclusion of evidence to be led by Mr Looker. The additional evidence Mr

Paewai has indicated that he wished to call did not, however, bear on the dismissal decision and, again, could not affect its fairness and reasonableness.

## Conclusion

[51] I accept Mr Upton's submission that the Court must be satisfied that the intended applicant has a chance of success should the matter proceed, citing *Stevenson v Hato Paora College Trust Board*.[7]

[52] The fundamental difficulty for Mr Looker on the merits is that, even if the allegations relied on in support of the extension were proven and, I note, the Authority rejected them, these are matters which either took place after the dismissal or were not raised with the respondent at the disciplinary enquiry and therefore would not be relevant to the fairness and reasonableness of the dismissal decision itself.

[53] The applicant's evidence has not contradicted the Authority's conclusion that the respondent had before it at the time of making the decision to dismiss Mr Looker summarily, sufficient unchallenged evidence to justify the conclusion reached, in terms of s 103A of the Act. I accept Mr Upton's submissions that the Court has before it sufficient evidence to safely conclude that the applicant's challenge has little or no chance of succeeding on the merits. This conclusion means that leave should not be granted to extend the time to file the challenge.

[54] As to other matters going to the Court's discretion, I note that in spite of being warned in the directions conference and the subsequent minute, that if the timetable was not complied with and leave had not been obtained in advance to extend it, the application for an extension would be dismissed, Mr Paewai has not met that condition. He has continued to file affidavits and submissions outside the Court imposed timetable. That is consistent with other delays by the applicant the respondent has relied on in its opposition to the granting of leave. That alone could have led to the dismissal of the application.

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[7] [2002] 2 ERNZ 103.

[55] Further, as I have previously observed, in dealing with the reasons for the delay there is conflict between Mr Paewai's submissions and his affidavit on precisely what he alleges he was told by the Court. The situation is distinguishable from a recent case, *Hutchison v Nelson City Council*,[8] where there was no issue that the applicant for leave had been advised by an Environment Court Registrar, which shares premises with the Employment Court in Wellington, that she did not need to count the 12 days beginning with 25 December and ending with 5 February, in lodging her challenge. That application for an extension was not opposed.

[56] The *Idea Services* case does not assist Mr Paewai. The application for an extension was not contested and appropriate steps were taken there to file within time, had the Christmas break not intervened, as in the *Hutchinson* case.

[57] Even if the time delay was adequately explained by Mr Looker, although I have strong reservations as to whether it has been, it was the matters relating to the merits of the challenge to which I have had the closest regard in exercising the discretion not to grant the extension.

[58] Further, in spite of the short delay in the attempt to file the challenge there is prejudice to the respondent in assuming there was finality and, because of the claim for reinstatement, the rights of others may be affected if the extension was granted.

[59] For the reasons I have given in accepting Mr Upton's submissions and the Authority's reasoning, I consider this litigation should be brought to an end to avoid incurring further delays and unrecoverable costs. The justice of the case requires that the application for an extension be declined.

[8] [2013] NZEmpC 10.

## Costs

[60] Costs are reserved. If they cannot be agreed the first memorandum is to be filed and served by 5 April 2013 and the memorandum in response by 19 April 2013.

B S Travis
Judge

Judgment signed at 2.15pm on 12 March 2013